

LESSONS FOR ADVOCACY FROM THE LIFE AND LEGACY OF THE REVEREND DOCTOR PAULI MURRAY*

BY FLORENCE WAGMAN ROISMAN**

PROPHECY

I sing of a new American
Separate from all others,
Yet enlarged and diminished by all others.
I am the child of kings and serfs, freemen and slaves,
Having neither superiors nor inferiors,
Progeny of all colors, all cultures, all systems, all beliefs.
I have been enslaved, yet my spirit is unbound.
I have been cast aside, but I sparkle in the darkness.
I have been slain but live on in the rivers of history.
I seek no conquest, no wealth, no power, no revenge;
I seek only discovery
Of the illimitable heights and depths of my own being.

-Pauli Murray (Dark Testament and Other Poems)¹

Many lessons may be drawn from the life and work of Anna Pauline Murray, who was known to the world as Pauli Murray. Part I of

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* This article is dedicated to the memory of my dear friend, Leslie Davis Brown. *See* Jacques Kelly, *Leslie Brown, Psychoanalyst and Social Activist, Dies*, Nov. 19, 2019. Brilliant, wise, generous, adventuresome, Leslie was the wife of Professor Emeritus C. Christopher Brown of the University of Maryland Francis King Carey School of Law.

** William F. Harvey Professor of Law and Chancellor's Professor, Indiana University Robert H. McKinney School of Law. I am deeply indebted to the late Professor Mary Harter Mitchell, who taught me (and many others) a great deal about human decency, advocacy, Pauli Murray, and much else; and to Professor Beth Harris and her sister Suzy Harris, Esq. for extremely helpful suggestions. I am grateful to Professor Joshua Aaron Jones, to Richard Humphrey of our Ruth M. Lilly Library for his invaluable assistance, to Barbara Becker for editorial aid, and to TaNay Porshonda Morris and Mollie Burgess for research help. Ms. Burgess prepared the final draft, and did an exceptional job. I deeply appreciate the careful and thorough work by the editors of this journal and their genuine interest in and respect for Dr. Murray. I also thank Chancellor Emeritus Jerry Bepko and Dean Andy Klein for inviting me annually to speak to their Law and Leadership students. For the past several years, I've spoken about Pauli Murray, and preparing those talks sparked my interest in writing about Murray. Their course also led to an earlier article, Florence Wagman Roisman, *An Extraordinary Woman: The Honorable Constance Baker Motley*, 49 Ind. L. Rev. 677 (2016). All errors, of course, are my responsibility.

¹ PAULI MURRAY, DARK TESTAMENT AND OTHER POEMS 66 (1970) [hereinafter DARK TESTAMENT AND OTHER POEMS].

this article discusses the life of the Reverend Dr. Murray; Part II suggests some of those lessons; and Part III, Dr. Murray's legacy.

I. LIFE

Pauli Murray, born in 1910, powerfully illustrates the quadruple burdens of being Black, female, poor, and sexually non-conformist.² The early Black feminist sense was of "double jeopardy: to be black and female" – as a 1970 text was titled.³ This expanded to "Triple Jeopardy," the name of the newspaper of the Third World Women's Alliance, published between 1971 and 1975.⁴ As described by Barbara Phillips, a Black civil rights lawyer in Mississippi, the title "referenc[ed] the analysis that black women were subordinated on the basis of . . . race and gender and that women of color also faced exploitative conditions in the labor force and other forms of subordination specific to working-class women."⁵ For some of these lower-income women of color, there was a fourth powerful impediment: not only race, gender, and class but also sexuality.⁶ Some of these women were lesbians; some, probably including Pauli Murray, were transgender.⁷

Although ze⁸ was considered "Black," Pauli Murray actually was of mixed race, with some ancestors who were white (including

² See ROSALIND ROSENBERG, JANE CROW: THE LIFE OF PAULI MURRAY 1, 6, 376–77, 387 (2017) [hereinafter ROSENBERG, JANE CROW]. As a constant reminder of pervasive, systemic white supremacy, I capitalize the word "Black." As a constant reminder of pervasive, systemic misogyny, I probably also should capitalize the words "female," "woman," and "women," but I do not.

³ Frances Beale, *Double Jeopardy: To Be Black and Female*, in THE BLACK WOMAN: AN ANTHOLOGY 109, 109–22 (Toni Cade Bambara ed., 1970).

⁴ Barbara Phillips, *How the Civil Rights Movement and Litigation Informed Other Movements for Social Justice*, in VOICES OF CIVIL RIGHTS LAWYERS: REFLECTIONS FROM THE DEEP SOUTH, 1964-1980, at 359, 360 (Kent Spriggs, ed., 2017).

⁵ *Id.* at 360, 365; see generally Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics* 1 U. OF CHICAGO LEGAL F. 139 (1989) (discussing the ways in which women of color are uniquely oppressed economically and in the workforce).

⁶ BARBARA RANSBY, MAKING ALL BLACK LIVES MATTER: REIMAGINING FREEDOM IN THE 21ST CENTURY ix, 160-164 (2018).

⁷ ROSENBERG, JANE CROW, *supra* note 2, at 1, 6, 376–77, 387.

⁸ Ze pronouns are utilized throughout this article to honor the life of Pauli Murray from a gender neutral perspective. See "Ze" Pronouns, MYPRONOUNS.ORG, <https://www.mypronouns.org/ze-hir> (last visited Apr. 14, 2020); Pronouns, WESTERN OR. UNIV. SAFEZONE, <https://wou.edu/wp/safezone/pronouns/> (last visited Apr. 14, 2020); Teresa M. Bejan, *What Quakers Can Teach Us About the Politics of Pronouns*, N.Y. TIMES (Nov. 16, 2019), <https://www.nytimes.com/2019/11/16/opinion/sunday/pronouns-quakers.html>; see also

owners of enslaved people) and some who were Native American.⁹ Some members of zir family “passed” and led lives as white people.¹⁰ One of Murray’s grandfathers had fought for the Union in the Civil War and then moved south, to North Carolina, to teach enslaved people who had been freed.¹¹ Murray was rejected by zir home state university, the University of North Carolina (UNC), on the ground that ze was Black, even though one of zir white great-great-grandfathers had been a trustee at UNC.¹² Later, Murray was rejected by zir chosen law school, Harvard, on the ground that ze was a woman.¹³

Pauli Murray came from an educated family; indeed, many in zir family were educators, but zir family was quite poor, because Black teachers in the South were paid very little.¹⁴ All Murray’s life ze struggled with zir sexuality, feeling that ze was a man trapped in a woman’s body.¹⁵ The consensus today is that Murray was transgender.¹⁶

As a teenager, Murray left North Carolina for New York City, where ze completed high school as the only student of color in a class of 4000.¹⁷ Murray then enrolled in Hunter College.¹⁸ While at Hunter, ze lived at, among other places, the Emma Ransom residence of the YWCA on West 137th Street in Harlem (the only YWCA in New York that would admit Black women).¹⁹ At the Y, Murray formed warm friendships with, among others, Anna Arnold Hedgeman, Dorothy

Monique Wittig, *Paradigm*, in *HOMOSEXUALITIES AND FRENCH LITERATURE* 114, 121 (Stambolian & Marks, eds., 1979) (stating that “Humankind must find another name for itself and another system of grammar that will do away with genders, the linguistic indicator of political oppositions”). I am grateful to Mollie Burgess for bringing my attention to this important matter and to Professor Joshua Aaron Jones for enhancing my education about gender neutrality.

⁹ PAULI MURRAY, *PROUD SHOES: THE STORY OF AN AMERICAN FAMILY* 33–45, 56–58, 60, 64 (1999) [hereinafter *PROUD SHOES*]; ROSENBERG, JANE CROW, *supra* note 2, at 3.

¹⁰ *PROUD SHOES*, *supra* note 9, at 70.

¹¹ ROSENBERG, JANE CROW, *supra* note 2, at 9–10.

¹² *Id.* at 70; PAULI MURRAY, *SONG IN A WEARY THROAT: AN AMERICAN PILGRIMAGE* 125 (1987) [hereinafter *SONG IN A WEARY THROAT: AN AMERICAN PILGRIMAGE*].

¹³ ROSENBERG, JANE CROW, *supra* note 2, at 136–37.

¹⁴ *PROUD SHOES*, *supra* note 9, at xiv–xv; *see also* GENNA RAE MCNEIL, *GROUNDWORK: CHARLES HAMILTON HOUSTON AND THE STRUGGLE FOR CIVIL RIGHTS* 136–41 (1983); MARK V. TUSHNET, *THE NAACP’S LEGAL STRATEGY AGAINST SEGREGATED EDUCATION, 1925-1950*, at 18–19 (1987).

¹⁵ ROSENBERG, JANE CROW, *supra* note 2, at 376–77, 387.

¹⁶ *Id.* at 1.

¹⁷ *Id.* at 32, 42.

¹⁸ *Id.* at 3.

¹⁹ *Id.* at 35; *see also* THOMAS J. SUGRUE, *SWEET LAND OF LIBERTY: THE FORGOTTEN STRUGGLE FOR CIVIL RIGHTS IN THE NORTH* 13 (2008) (stating that “[t]he Harlem YWCA was a social, political, and intellectual hub. Nearly every major and minor poet, politician, civil rights leader, and minister made an appearance there”).

Height, and Ella Baker.²⁰ What Professor Ransby writes of Ella Baker is true of Baker's friend Pauli Murray: ze was ". . . part of a powerful, yet invisible network of dynamic and influential African American women activists who sustained civil rights causes, and one another, across several generations."²¹ Murray worked at the Y, and then in 1929 as a server at the Alice Foote MacDougall restaurant on West 46th Street.²²

In 1936, Murray began to enhance zir education in labor-related topics.²³ Ze took night classes with former Communist Jay Lovestone of the New Workers School, worked (with Ella Baker, Conrad Lynn, and others) in the Workers' Education Project of the Works Progress Administration (WPA), and then studied at the Brookwood Labor College before returning to the WPA.²⁴ Most of the teachers at the Workers' Education Project were sympathetic with and encouraged "the militant forces within the burgeoning trade union movement . . ."; Murray, Baker, and Lynn strove to "radicalize [their] students by linking [consumers' problems]. . . with larger issues of inequality and the need for social change."²⁵ Brookwood, "the bastion of labor progressivism, . . . claimed the distinction of being the first residential, coeducational labor

²⁰ ROSENBERG, JANE CROW, *supra* note 2, at 36; on Hedgeman, *see* JENNIFER SCANLON, UNTIL THERE IS JUSTICE: THE LIFE OF ANNA ARNOLD HEDGEMAN (2016), WILLIAM P. JONES, THE MARCH ON WASHINGTON: JOBS, FREEDOM, AND THE FORGOTTEN HISTORY OF CIVIL RIGHTS 73 (2013), ANNA ARNOLD HEDGEMAN, THE TRUMPET SOUNDS: A MEMOIR OF NEGRO LEADERSHIP (1964) & ANNA ARNOLD HEDGEMAN, THE GIFT OF CHAOS: DECADES OF AMERICAN DISCONTENT (1977); on Height, *see* WILLIAM P. JONES, *supra*, DOROTHY HEIGHT, OPEN WIDE THE FREEDOM GATES: A MEMOIR (2003); on Baker, *see* BARBARA RANSBY, ELLA BAKER AND THE BLACK FREEDOM MOVEMENT: A RADICAL DEMOCRATIC VISION (2003) [hereinafter RANSBY, ELLA BAKER]; and JOANNE GRANT, ELLA BAKER: FREEDOM BOUND (1998).

²¹ RANSBY, ELLA BAKER, *supra* note 20, at 4 (identifying as the "notable black women" who intersected with Ella Baker "Anna Arnold Hedgeman, Dorothy Height, Nannie Helen Burroughs, Pauli Murray, Mary McLeod Bethune, Septima Clark, and Fannie Lou Hamer").

²² ROSENBERG, JANE CROW, *supra* note 2, at 36; *see also* YVETTE RICHARDS, MAIDA SPRINGER: PAN-AFRICANIST AND INTERNATIONAL LABOR LEADER 32 (2000) (stating that Maida Springer, who became a close friend of Murray's, had tried to work at the Alice Foote MacDougall restaurant in 1921, but had been rejected because her complexion was too dark). (Murray's autobiography, *Song in a Weary Throat: An American Pilgrimage*, is dedicated "To Maida: Incomparable companion, critic, and guide on the pilgrimage").

²³ ROSENBERG, JANE CROW, *supra* note 2, at 54.

²⁴ *Id.* at 53–55; on the Workers' Education Project and Brookwood Labor College; *see* RICHARD J. ALTENBAUGH, EDUCATION FOR STRUGGLE: THE AMERICAN LABOR COLLEGES OF THE 1920S AND 1930S 3–4 (1990); on Lovestone, *see* GLENDA ELIZABETH GILMORE, DEFYING DIXIE: THE RADICAL ROOTS OF CIVIL RIGHTS, 1919–1950, at 59 (2008), & RANSBY, ELLA BAKER, *supra* note 20, at 96–97 (describing interracial organizing and "commitment to understanding the connections between racial injustice and class inequality"); on Ella Baker, *see* RANSBY, ELLA BAKER, *supra* note 20, at 97 & GRANT, *supra* note 20, at 33; on Conrad Lynn, *see* CONRAD LYNN, THERE IS A FOUNTAIN: THE AUTOBIOGRAPHY OF CONRAD LYNN 66 (1993).

²⁵ RANSBY, ELLA BAKER, *supra* note 20, at 92–96.

college in the nation.”²⁶ At Brookwood, where Murray was one of three persons perceived as women and two persons perceived as Black, ze “undertook a crash course in the history of the labor movement, principles of unionism, labor economics, and labor journalism.”²⁷

In November 1938, Murray applied to do graduate work in sociology at the University of North Carolina (UNC), which admitted only white students.²⁸ Zir application was “transformed into a public controversy” the next month when, on December 12, 1938, the United States Supreme Court decided *Missouri ex rel. Gaines v. Canada*,²⁹ ordering Lloyd Gaines, a Black person, admitted to Missouri’s all white law school, and holding inadequate under the Equal Protection Clause the state’s offer to pay Gaines’s tuition at an out-of-state law school or to create an in-state law school for Black students.³⁰ Although Murray later wrote that ze had been “wholly unaware” of the Gaines case, Professor Gilmore persuasively argues that this is unlikely and Professor Rosenberg writes that Murray “almost certainly” had read Charles Hamilton Houston’s January 1938 article in the NAACP’s journal, *The Crisis*, that discussed the NAACP’s litigation plans.³¹

Although Murray uses the passive voice to describe the “public controversy,” ze actively and creatively focused public attention on zir effort to desegregate the graduate program at UNC.³² When President Roosevelt visited UNC to accept an honorary Doctor of Laws degree on December 5, 1938, he spoke of his pride in being an alumnus of UNC, “typifying as it does American liberal thought and American tradition.”³³ Murray wrote a scathing letter to the President, and sent a copy and a note to Eleanor Roosevelt.³⁴ Murray later sent to Walter White, executive secretary of the NAACP, both zir UNC application and an

²⁶ ALTENBAUGH, *supra* note 24, at 3–4.

²⁷ ROSENBERG, JANE CROW, *supra* note 2, at 54–55.

²⁸ *Id.* at 65–78.

²⁹ 305 U.S. 337 (1938).

³⁰ *See id.* at 342, 344–45; SONG IN A WEARY THROAT: AN AMERICAN PILGRIMAGE, *supra* note 12, at 114; cf. PATRICIA SULLIVAN, LIFT EVERY VOICE: THE NAACP AND THE MAKING OF THE CIVIL RIGHTS MOVEMENT 233 (2009) (erroneously stating that Murray’s application to UNC law school had been denied and suggesting this preceded the decision in Lloyd Gaines’s suit; Murray did later apply to UNC’s law school); *see also* ROSENBERG, JANE CROW, *supra* note 2, at 77.

³¹ SONG IN A WEARY THROAT: AN AMERICAN PILGRIMAGE, *supra* note 12, at 114; GILMORE, *supra* note 24, at 264–65; ROSENBERG, JANE CROW, *supra* note 2, at 67.

³² SONG IN A WEARY THROAT: AN AMERICAN PILGRIMAGE, *supra* note 12, at 115.

³³ *Id.* at 110–11.

³⁴ *Id.* at 111–13 (zir letter to Mrs. Roosevelt led to decades of correspondence and friendship between them, documented in PATRICIA BELL-SCOTT, THE FIREBAND AND THE FIRST LADY: PORTRAIT OF A FRIENDSHIP: PAULI MURRAY, ELEANOR ROOSEVELT, AND THE STRUGGLE FOR SOCIAL JUSTICE 13 (2016)).

abridged version of zir letter to President Roosevelt, which ze hoped might be published in *The Crisis*.³⁵ Murray also wrote to Dr. Frank P. Graham, the president of UNC, and others there and sent copies of that correspondence also to Walter White.³⁶ In addition, ze tried to secure the support of Dr. James Shepard, the Black president of the North Carolina College for Negroes, who had stymied the earlier attempt of a Black student, Thomas Raymond Hocutt, to secure admission to UNC.³⁷ Murray continued to correspond with Dr. Graham, wrote also to the UNC newspaper, and had zir correspondence published in the Black press.³⁸ Murray told UNC ze was “thoroughly prepared to fight this case through to the Supreme Court”³⁹ As Professor Gilmore writes, “Pauli Murray never made idle threats”; ze kept local Black lawyers informed of all zir efforts.⁴⁰

When these efforts proved unsuccessful, Murray attempted to persuade the NAACP to litigate zir case.⁴¹ Murray explained that Thurgood Marshall told zir ze was an undesirable plaintiff because ze had not established residence in North Carolina, but Professor Gilmore shows that the NAACP had other reasons not to support Murray.⁴² Roy Wilkins, editor of *The Crisis*, and Walter White, executive secretary, had considerable sympathy for the predicament of Dr. Graham; they and others at the NAACP, including Thurgood Marshall and Charles Hamilton Houston, were concerned that Murray was “too maverick,” perhaps too “Red,” perhaps too sexually nonconformist.⁴³

In 1940, Murray began working for the Socialist Workers Defense League (WDL), for which ze helped to organize the annual National Sharecroppers Week and its annual dinner and forum.⁴⁴ Later that year, Murray and a friend objected to their treatment on a segregated

³⁵ ROSENBERG, JANE CROW, *supra* note 2, at 71.

³⁶ SONG IN A WEARY THROAT: AN AMERICAN PILGRIMAGE, *supra* note 12, at 115–17.

³⁷ GILMORE, *supra* note 24, at 255–67.

³⁸ SONG IN A WEARY THROAT: AN AMERICAN PILGRIMAGE, *supra* note 12, at 122–24; ROSENBERG, JANE CROW, *supra* note 2, at 73.

³⁹ GILMORE, *supra* note 24, at 267.

⁴⁰ *Id.*

⁴¹ *Id.* at 267–68.

⁴² *Id.* at 285–89.

⁴³ *Id.* at 272–73, 285–89; ROSENBERG, JANE CROW, *supra* note 2, at 76–77; Glenda Elizabeth Gilmore, *From Jim Crow to Jane Crow, or How Pauli Murray and Anne Scott Found Each Another*, in *WRITING WOMEN’S HISTORY: A TRIBUTE TO ANNE FIOR SCOTT* 142, 153 (Elizabeth Payne ed. 2011) (stating that Marshall did, however, send a strong recommendation of Murray to Leon Ransom, acting dean at Howard Law School, when Murray applied to study there).

⁴⁴ GILMORE, *supra* note 24, at 315; see GILBERT WARE, WILLIAM HASTIE: GRACE UNDER PRESSURE 161 (1984) (describing the Workers Defense League as “a Norman Thomas socialist-oriented agency for the poor”).

bus in Virginia and were arrested, jailed, tried, convicted, and jailed again for their conduct.⁴⁵ “Murray had been studying Gandhian techniques of nonviolence . . .” and employed them on the bus and in the jail.⁴⁶ Both the Workers Defense League and the NAACP provided counsel for Murray and her companion, Adelene McBean, but ultimately the NAACP declined to appeal the case.⁴⁷

Professor Gilmore writes that this experience “taught Murray that African Americans must mount a direct action movement alongside the NAACP’s litigation strategy” and that Murray “became convinced that she should start an ‘American Satyagraha movement.’”⁴⁸ Although Murray did not live there for long, she also became a “charter member of the Harlem Ashram” that later housed James Farmer and saw frequent visits from Bayard Rustin.⁴⁹

In 1941, Murray led efforts by the Workers Defense League to try to save the life of a Black sharecropper named Odell Waller, who had been sentenced to death in Virginia for killing his white landlord.⁵⁰ Odell Waller’s claim of self-defense was rejected by an all-white, all male jury.⁵¹ The Supreme Court of Appeals of Virginia affirmed the

⁴⁵ See GILMORE, *supra* note 24, at 317.

⁴⁶ *Id.*

⁴⁷ SONG IN A WEARY THROAT: AN AMERICAN PILGRIMAGE, *supra* note 12, at 137–49; GILMORE, *supra* note 24, at 316–27; ROSENBERG, JANE CROW, *supra* note 2, at 81–95 (stating that William Hastie, on behalf of the NAACP, “explained that the chance of success was too slight to justify the \$300 the appeal would cost”). It is not clear why the NAACP did not pursue the appeal after it had provided counsel at trial. Murray indicates the reason was that the trial judge had dismissed the charge of violating the Virginia segregation statute, convicting the women only of disorderly conduct. ROSENBERG, JANE CROW, *supra* note 2, at 90–91. Professors Gilmore and Rosenberg indicate that another reason may have been an article by Harold Garfinkel in the Urban League’s journal, *Opportunity*, that portrayed the bus confrontation less sympathetically and described Murray as presenting herself as a boy. GILMORE, *supra* note 24, at 322–24; ROSENBERG, JANE CROW, *supra* note 2, at 91–92. On Judge Hastie, see generally WARE, *supra* note 44.

⁴⁸ GILMORE, *supra* note 24, at 327. “Satyagraha” means “Power (or force) of truth, love and nonviolence. The word has a broad meaning to include various forms of social and political action . . .” DENNIS DALTON, MAHATMA GANDHI: NONVIOLENT POWER IN ACTION 249 (1993).

⁴⁹ ROSENBERG, JANE CROW, *supra* note 2, at 101; on Farmer, see generally, AUGUST MEIER & ELLIOTT RUDWICK, CORE: A STUDY IN THE CIVIL RIGHTS MOVEMENT 1942-1968 (1973); JAMES FARMER, LAY BARE THE HEART: AN AUTOBIOGRAPHY OF THE CIVIL RIGHTS MOVEMENT (1985); on Rustin, see generally JOHN D’EMILIO, LOST PROPHET: THE LIFE AND TIMES OF BAYARD RUSTIN (2003); JERVIS ANDERSON, BAYARD RUSTIN: TROUBLES I’VE SEEN: A BIOGRAPHY (1997); BAYARD RUSTIN, DOWN THE LINE: THE COLLECTED WRITINGS OF BAYARD RUSTIN (1971).

⁵⁰ ROSENBERG, JANE CROW, *supra* note 2, at 97–106.

⁵¹ RICHARD B. SHERMAN, THE CASE OF ODELL WALLER AND VIRGINIA JUSTICE, 1940-1942, at 25, 32 (1992).

death sentence and rejected Waller's claim that the limitation of jury members to those who had paid the poll tax was unconstitutional.⁵²

Profoundly frustrated by these and other evidences of white supremacist oppression, in September 1941 Murray enrolled in Howard Law School.⁵³ In the Summer after his first year, he returned to the Workers Defense League and the campaign to save Odell Waller's life.⁵⁴ Murray persuaded both Eleanor Roosevelt and President Roosevelt to intervene, but the governor of Virginia declined to commute the death sentence to life in prison.⁵⁵ On July 2, 1942, Odell Waller was electrocuted by the Commonwealth of Virginia.⁵⁶

At the request of A. Philip Randolph, Murray organized a march to protest Odell Waller's death, "the poll tax, two recent lynchings of blacks, and the brutal beating in Rome, Georgia, of the renowned black tenor Roland Hayes and his wife."⁵⁷ This Silent Protest March in New York City was to be modeled on Gandhi's Salt March to the Sea.⁵⁸ One important outcome of the planning process is that it brought together Murray and Maida Springer, who became close friends.⁵⁹ The March occurred on July 25, 1942, with hundreds of people, most of them Black, marching to the sound of muffled drums from 56th Street and 8th Avenue to Union Square at 14th Street and a memorial service for Waller "and other victims of racial injustice."⁶⁰

⁵² SONG IN A WEARY THROAT: AN AMERICAN PILGRIMAGE, *supra* note 12, at 168–69. Poll taxes in federal elections were prohibited by the Twenty-fourth Amendment to the Constitution, which was ratified in 1964. U.S. CONST. amend. XXIV. In 1966, the Supreme Court held state poll tax requirements unconstitutional in *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966). See THE OXFORD GUIDE TO THE SUPREME COURT OF THE UNITED STATES 759–60, 424–25 (Kermit L. Hall, ed. 2005).

⁵³ ROSENBERG, JANE CROW, *supra* note 2, at 105; see WARE, *supra* note 44, at 162 (stating that "Murray had vowed that she would become a lawyer if Waller were executed").

⁵⁴ ROSENBERG, JANE CROW, *supra* note 2, at 105.

⁵⁵ See BELL-SCOTT, *supra* note 34, at 72–91; see also ROSENBERG, JANE CROW, *supra* note 2, at 106.

⁵⁶ ROSENBERG, JANE CROW, *supra* note 2, at 106; SONG IN A WEARY THROAT: AN AMERICAN PILGRIMAGE, *supra* note 12, at 169–74; BELL-SCOTT, *supra* note 34, at 93.

⁵⁷ RICHARDS, *supra* note 22, at 75.

⁵⁸ ROSENBERG, JANE CROW, *supra* note 2, at 106. With respect to Gandhi's Salt March, see generally, DALTON, *supra* note 48, at 91–138 (2012); DAVID ARNOLD, GANDHI: PROFILES IN POWER 144–151 (2001); RAJMOHAN GANDHI, GANDHI: THE MAN, HIS PEOPLE, AND THE EMPIRE 302–50 (2008) (all discussing Gandhi's great Salt March, a non-violent civil disobedience campaign against the British salt monopoly).

⁵⁹ RICHARDS, *supra* note 22, at 75.

⁶⁰ ROSENBERG, JANE CROW, *supra* note 2, at 108–09; see also JONES, *supra* note 20, at 53 (stating that the 500 marchers were women); see also GILMORE, *supra* note 24, at 329–44, 366–69 (discussing Murray's involvement with the Waller case). Curiously, in light of the long and close involvement of Murray and Mr. Randolph, Murray is not listed in the indices to either of two biographies of Mr. Randolph. CORNELIUS L. BYNUM, A. PHILIP RANDOLPH AND THE

As Murray returned to Howard Law School in the Fall of 1942, “she attended a national planning conference to institutionalize the March on Washington Movement and helped produce an outline for mass protests using nonviolent direct action”; indeed, what “Murray and her associates laid out” was “the strategy for the modern civil rights movement.”⁶¹ Ze developed a program of sit-ins, picketing, boycotts – “‘non-violent direct action’ on the Gandhi model” – to end discrimination in employment, public accommodations, transportation, and the press, to secure “mass registration of the Negro People” and to “abolish the poll tax.”⁶²

In 1942, at Howard, Murray audited Caroline Ware’s undergraduate course in constitutional history “and was deeply influenced by [Ware’s] approach to equal rights and workers’ welfare.”⁶³ Ware’s analysis of women’s rights particularly affected Murray’s and bore fruit in 1961 as both helped to resolve much debate about the Equal Rights Amendment (ERA).⁶⁴ Another mentor to Murray was Howard Thurman, Dean of the Rankin Chapel at Howard University, Professor of Divinity at Howard, and one of the first African-Americans to meet Gandhi (in 1936).⁶⁵

Serving as an adviser to Howard undergraduates in zir second year at Howard Law School, Murray masterminded “the first successful restaurant sit-in in Washington, DC, two decades before sit-ins would spread across the South.”⁶⁶ Ze led students in meticulously planning and executing the sit-in at the Little Palace Cafeteria, near the Howard campus.⁶⁷ Forty-eight hours after Murray’s cohorts occupied the restaurant, the owners capitulated. Murray made effective use of the Black press; most of the white press ignored the activity.⁶⁸ Murray also taught a class on “nonviolent direct-action techniques”; and joined the Howard

STRUGGLE FOR CIVIL RIGHTS 241 (2010) or JERVIS ANDERSON, A. PHILIP RANDOLPH: A BIOGRAPHICAL PORTRAIT 393 (1973).

⁶¹ GILMORE, *supra* note 24, at 384–85.

⁶² *Id.* at 384–86.

⁶³ ROSALIND ROSENBERG, *Pauli Murray and the Killing of Jane Crow*, in FORGOTTEN HEROES: INSPIRING AMERICAN PORTRAITS FROM OUR LEADING HISTORIANS 279, 283 (Susan Ware, ed. 1998) [hereinafter FORGOTTEN HEROES: INSPIRING AMERICAN PORTRAITS FROM OUR LEADING HISTORIANS].

⁶⁴ *Id.*

⁶⁵ QUINTON H. DIXIE & PETER EISENSTADT, VISIONS OF A BETTER WORLD: HOWARD THURMAN’S PILGRIMAGE TO INDIA AND THE ORIGINS OF AFRICAN AMERICAN NONVIOLENCE 129–30, 160–61 (2011); SUDARSHAN KAPUR, RAISING UP A PROPHET: THE AFRICAN AMERICAN ENCOUNTER WITH GANDHI 7 (1992).

⁶⁶ ROSENBERG, JANE CROW, *supra* note 2, at 4.

⁶⁷ *Id.* at 126.

⁶⁸ *Id.* at 126–27; GILMORE, *supra* note 24, at 385–93.

chapter of the NAACP in working for Congressional passage of civil rights legislation for the District of Columbia.⁶⁹

In 1942, Pauli Murray wrote a bitter letter to President Roosevelt protesting reported removals from the West Coast of people of Japanese descent.⁷⁰ Ze sent a copy to Eleanor Roosevelt, who returned a “blistering response.”⁷¹ As a delegate to the International Student Assembly in Washington in September 1942, Murray promoted a resolution “condemning the British for imprisoning Gandhi and denouncing the Soviets for occupying Lithuania.”⁷²

The summer of 1943 followed Murray’s second year in law school.⁷³ That was a summer of major race riots, of white on Black violence, in Detroit, Harlem, and many other communities.⁷⁴ When President Roosevelt responded mildly to the deaths and injuries, an outraged Murray wrote an angry poem, “Mr. Roosevelt Regrets,” which ze sent to, among other people, Eleanor Roosevelt.⁷⁵ Pauli Murray once said: “One person plus a typewriter constitutes a movement.”⁷⁶

When Murray returned to Howard for zir third year, ze also returned to counseling other Howard students with respect to desegregating restaurants in Washington, D.C.⁷⁷ That Fall ze decided to target a restaurant downtown, in a white area.⁷⁸ Ze chose the John R. Thompson restaurant located three blocks from the White House.⁷⁹ This was part of a national chain, based in Chicago, that had two other locations in D.C.⁸⁰ As with the earlier sit-in, there was meticulous planning and insistence on non-violence.⁸¹ Murray organized a campaign of what ze called “intelligent showmanship and an attitude of good will on the part of the demonstrators” designed “to minimize antagonism and ‘swing the

⁶⁹ GILMORE, *supra* note 24, at 389.

⁷⁰ ROSENBERG, JANE CROW, *supra* note 2, at 109–10.

⁷¹ *Id.* at 110; BELL-SCOTT, *supra* note 34, at 99–106.

⁷² *Id.* at 111.

⁷³ GILMORE, *supra* note 24, at 384; ROSENBERG, JANE CROW, *supra* note 2, at 130.

⁷⁴ See, e.g., DOMINIC J. CAPECI, JR., *THE HARLEM RIOT OF 1943* (1977); DOMINIC J. CAPECI, JR., & MARTHA WILKERSON, *LAYERED VIOLENCE: THE DETROIT RIOTERS OF 1943* (1991).

⁷⁵ ROSENBERG, JANE CROW, *supra* note 2, at 130; GILMORE, *supra* note 24, at 373–74; Pauli Murray, *Mr. Roosevelt Regrets (Detroit Riot, 1943)*, in *DARK TESTAMENT AND OTHER POEMS* 27 (1970); see Pauli Murray, *Harlem Riot, 1943* in *DARK TESTAMENT AND OTHER POEMS* 28 (1970).

⁷⁶ ROSENBERG, JANE CROW, *supra* note 2, at 138.

⁷⁷ See *id.* at 133.

⁷⁸ *Id.*

⁷⁹ *Id.* at 134.

⁸⁰ *Id.*

⁸¹ ROSENBERG, JANE CROW, *supra* note 2, at 133–34.

crowd to our side.”⁸² This sit-in, which included the unplanned participation of six Black soldiers, succeeded after four and a half hours.⁸³

While Murray was at Howard, a white woman, Betsy Graves Reyneau, enhanced Murray’s interest in feminism.⁸⁴ Reyneau, a painter who specialized in portraits of distinguished African-Americans, arrived at Howard in the Fall of 1943, and helped to educate Pauli Murray about the history of the struggle for women’s rights and its relationship to abolitionism.⁸⁵ Subsequently, Murray coined the term “Jane Crow” to link sex discrimination to race discrimination.⁸⁶ As early as 1945, Murray wrote that ze was “beginning to believe strongly the FEPC [Fair Employment Practices Commission] bill should be amended to include ‘sex’ along with its other ‘race, color, creed or national origin’ factors.”⁸⁷

At Howard, Murray was at the head of zir class and the only woman in zir class.⁸⁸ (Indeed, except for the registrar, ze was the only woman at Howard Law School.⁸⁹) Murray was shocked by the sex discrimination ze encountered there, from faculty as well as zir fellow students.⁹⁰ For two years, ze lived on the Howard campus, in the first-floor powder room of what was then the freshman women’s dormitory, Sojourner Truth Hall.⁹¹

Increasingly impatient with both sex and race discrimination, and enraged by discrimination by private parties as well as government entities, Murray urged a direct attack on the buttresses of segregation and discrimination.⁹² Murray focused on the 13th and 14th Amendments as tools.⁹³ Impediments, of course, were the Civil Rights Cases of 1883, restricting the Fourteenth Amendment to state action, and *Plessy v. Ferguson*, endorsing the concept of separate-but-equal.⁹⁴ In 1944, Murray

⁸² *Id.* at 134.

⁸³ *Id.* at 134–35.

⁸⁴ *Id.* at 130–32.

⁸⁵ *Id.* at 130.

⁸⁶ ROSENBERG, JANE CROW, *supra* note 2, at 4.

⁸⁷ PAULI MURRAY & CAROLINE WARE, FORTY YEARS OF LETTERS IN BLACK AND WHITE 35–36 (Anne Firor Scott ed., 2006) (letter of March 30, 1945 from Pauli Murray to Caroline Ware).

⁸⁸ ROSENBERG, JANE CROW, *supra* note 2, at 4.

⁸⁹ *Cf.* Gilmore, *supra* note 43, at 153 (stating that Murray was one of two women in the class).

⁹⁰ *See id.* at 115–17.

⁹¹ *Id.* at 121–22.

⁹² *Id.* at 145.

⁹³ ROSENBERG, JANE CROW, *supra* note 2, at 147.

⁹⁴ The Civil Rights Cases, 109 U.S. 3, 10–11 (1883); *Plessy v. Ferguson*, 163 U.S. 537, 547–48 (1896).

bet Spottswood Robinson, then a professor at Howard Law School, \$10 that Plessy would be overturned within 25 years.⁹⁵

To help reach that result, Murray wrote zir senior paper on the topic “Should the *Civil Rights Cases* and *Plessy v. Ferguson* be overturned?”⁹⁶ The paper laid out a strategy for direct attacks on segregation.⁹⁷ It made use of the dissents of Justice John Marshall Harlan in both cases and the social science research embodied in Gunnar Myrdal’s 1944 treatise, *An American Dilemma*.⁹⁸ Justice Harlan focused on the Reconstruction Amendments’ objective to protect the newly-freed slaves from both public and private discrimination; Myrdal wrote that then-current conditions were “in reality the survivals in modern American society of the slavery institution.”⁹⁹ Murray’s paper later was used by Thurgood Marshall, Robert Carter, Constance Baker Motley and their colleagues in the litigation that led to the decision in *Brown v. Board of Education*.¹⁰⁰

Pauli Murray graduated from Howard in 1944, first in zir class.¹⁰¹ It was traditional for the student who led the Howard class to do graduate work at Harvard, but Murray was denied this opportunity because ze was a woman.¹⁰² (Harvard did not admit women until 1950.)¹⁰³ Murray and zir sister moved to Los Angeles, where Murray worked briefly as a reporter for Loren Miller, civil rights attorney and co-publisher of the *Los Angeles Sentinel*.¹⁰⁴ In Los Angeles, Murray and zir sister received (and defied) a letter from a “Property Owners” group informing them that the apartment they occupied “is restricted to the white or Caucasian race . . .”¹⁰⁵

⁹⁵ ROSENBERG, JANE CROW, *supra* note 2, at 132, 195; for the Honorable Spottswood Robinson, *see e.g.*, KLUGER, *supra* note 14; TUSHNET, *supra* note 14; MCNEIL, *supra* note 14; TUSHNET, *supra* note 14. Shockingly, there is no biography of Judge Robinson. *Plessy v. Ferguson* was overruled in 1956, in *Browder v. Gayle*, 352 U.S. 903 (1956). *See infra* note 220.

⁹⁶ ROSENBERG, JANE CROW, *supra* note 2, at 147.

⁹⁷ *Id.* at 195.

⁹⁸ GUNNAR MYRDAL, *AN AMERICAN DILEMMA: THE NEGRO PROBLEM AND MODERN DEMOCRACY* (1944).

⁹⁹ *Id.* at 148.

¹⁰⁰ *Id.* at 132, 195; *Brown v. Bd. of Educ.* 347 U.S. 483 (1954).

¹⁰¹ ROSENBERG, JANE CROW, *supra* note 2, at 4.

¹⁰² ROSENBERG, JANE CROW, *supra* note 2, at 137; *id.* at 410 n.69 (stating that Murray applied to Harvard again in 1950 and was told “it admitted only students who had earned master’s degrees at Harvard, something it had denied her the right to do in 1944”).

¹⁰³ JILL NORGREN, *STORIES FROM TRAILBLAZING WOMEN LAWYERS: LIVES IN THE LAW* 51 (2018).

¹⁰⁴ GILMORE, *supra* note 24, at 401; on Loren Miller, *see* AMINA HASSAN, *LOREN MILLER: CIVIL RIGHTS ATTORNEY AND JOURNALIST* 133 (2015).

¹⁰⁵ GILMORE, *supra* note 24, at 401.

Rejected by Harvard, Murray earned zir master's degree in law from the law school of the University of California at Berkeley (then called Boalt Hall); zir thesis, "The Right to Equal Opportunity in Employment," was published in the California Law Review.¹⁰⁶ In this article, Murray pursued zir attack on the state action requirement that was read into the Fourteenth Amendment by the Civil Rights Cases; ze theorized an expansion of constitutional limits on "arbitrary interference with the right to work"¹⁰⁷ Zir biographer, Rosalind Rosenberg, writes that the publication of this thesis "marked the culmination of a seven-year odyssey, during which Murray addressed—through nonviolent direct action, newspaper columns, and scholarly research — every major civil rights issue of her time: state segregation laws that restricted access to education and public accommodations . . . ; political discrimination through the poll tax . . . ; segregation by custom at lunch rooms . . . ; and private discrimination in housing and employment"¹⁰⁸ But as Professor Goluboff emphasizes, Murray's focus in employment was not just discrimination, but more broadly the right to work. "[D]espite the title of Murray's 1945 article . . . she did not begin with . . . racial nondiscrimination. Rather, she began with . . . 'the broader interest in freely disposing of one's labor.'"¹⁰⁹ Murray emphasized the need for full employment, writing that "When jobs are plentiful, all kinds of economic discrimination are minimized. . . . The basic problem . . . , therefore, is the problem of full employment."¹¹⁰ Murray passed the California bar exam and in 1946 became the first African American Deputy Attorney General in the state.¹¹¹

In 1947, Murray worked on one of the amicus briefs in *Mendez v. Westminster*, which challenged segregation in the California schools of people with Spanish surnames.¹¹² The brief on which ze worked was filed by the American Jewish Congress; the NAACP and other major

¹⁰⁶ Pauli Murray, *The Right to Equal Opportunity in Employment*, 33 CAL. L. REV. 388 (1945) [hereinafter *The Right to Equal Opportunity in Employment*]. With respect to the law school's name, see Gretchen Kell, *UC Berkeley Removes Racist John Boalt's Name from Law School*, Berkeley News (Jan. 30, 2020), <https://news.berkeley.edu/2020/01/30/boalt-hall-denamed/>.

¹⁰⁷ *The Right to Equal Opportunity in Employment*, *supra* note 106, at 432. See RISA L. GOLUBOFF, *THE LOST PROMISE OF CIVIL RIGHTS* 109 (2007) (discussing Pauli Murray's role in developing the NAACP's theories for litigating labor and economic issues in the 1940s). This crucial part of Murray's legacy is discussed in Part III.

¹⁰⁸ ROSENBERG, JANE CROW, *supra* note 2, at 160.

¹⁰⁹ GOLUBOFF, *supra* note 107, at 209.

¹¹⁰ *The Right to Equal Opportunity in Employment*, *supra* note 106, at 388, 432; GOLUBOFF, *supra* note 107, at 109.

¹¹¹ ROSENBERG, JANE CROW, *supra* note 2, at 161.

¹¹² See *id.* at 169–70; *Westminster Sch. D. of Orange Cnty. v. Mendez*, 161 F.2d 774 (9th Cir. 1947).

civil rights groups also participated in the case.¹¹³ The Pauli Murray/American Jewish Congress brief, however, followed the analysis in Murray's senior paper and argued that segregation always was unconstitutional, regardless of whether facilities were equal – and that applied to discrimination of all kinds, including sex discrimination, and facilities of all kinds, including schools and transportation.¹¹⁴ Murray also introduced the language of the United Nations Charter to the brief.¹¹⁵ When *Brown v. Board* was being litigated, Robert Carter and Spottswood Robinson persuaded Thurgood Marshall to use this reasoning and make a frontal attack on segregation.¹¹⁶

Also in 1947, Murray was actively involved in planning the Journey of Reconciliation led by Bayard Rustin and others to test compliance with the Supreme Court's decision in *Morgan v. Virginia*.¹¹⁷ Planning meetings occurred in the apartment of Natalie Mormon, another long-time challenger of segregation.¹¹⁸ The decision that only men would be riders "was a grave disappointment to several women – including the veteran black activists Ella Baker and Pauli Murray – who had been actively involved in planning the trip."¹¹⁹

¹¹³ See PHILIPPA STRUM, *MENDEZ V. WESTMINSTER: SCHOOL DESEGREGATION AND MEXICAN-AMERICAN RIGHTS* 133–35 (2010).

¹¹⁴ See ROSENBERG, JANE CROW, *supra* note 2, at 170.

¹¹⁵ See *id.*

¹¹⁶ *Id.* at 171, 195. With respect to Mendez, see STRUM, *supra* note 113, at 134 (stating that Murray "had helped create the Congress of Racial Equality [CORE] in 1942"). Murray is not mentioned in Meier and Rudwick's book about CORE. MEIER & RUDWICK, *supra* note 49. Murray writes that Bayard Rustin and James Farmer, staff members of the Fellowship of Reconciliation, "were active in founding" CORE; Murray writes that "I was a contributing member of CORE" but does not say that she was involved in starting CORE. SONG IN A WEARY THROAT: AN AMERICAN PILGRIMAGE, *supra* note 12, at 201. Murray is not listed in the index to James Farmer's autobiography, FARMER, *supra* note 49, or in the biography of A.J. Muste, LEILAH DANIELSON, *AMERICAN GANDHI: A.J. MUSTE AND THE HISTORY OF RADICALISM IN THE TWENTIETH CENTURY* (2014).

¹¹⁷ *Morgan v. Virginia*, 328 U.S. 373 (1946) (invalidating Virginia law requiring racial segregation on interstate buses); ROSENBERG, JANE CROW, *supra* note 2, at 95–96; RAYMOND ARSENAULT, *FREEDOM RIDERS: 1961 AND THE STRUGGLE FOR RACIAL JUSTICE* 35 (2006); see also MURRAY & WARE, *supra* note 87, at 39 (showing that in a May 3, 1947 letter to Caroline Ware, Murray references "the Reconciliation Tour . . . which was brain trusted from this end by a number of us . . .").

¹¹⁸ GRANT, *supra* note 20, at 91–92.

¹¹⁹ ARSENAULT, *supra* note 117, at 35; RANSBY, ELLA BAKER, *supra* note 20, at 265–66. Natalie Mormon is not mentioned in the indices of Arsenault or Ransby or in Catherine A. Barnes, *Journey from Jim Crow: The Desegregation of Southern Transit* (1983). It is noteworthy that the Freedom Rides that began in 1961 included many women as architects and Riders; indeed, were it not for the actions of Diane Nash, the Freedom Rides probably would have ended in Birmingham. See ARSENAULT, *supra* note 117, at 181.

In 1949, Murray ran on the Liberal Party ticket for a seat on the New York City Council from Brooklyn's 10th Senatorial District.¹²⁰ Maida Springer was zir campaign manager. The campaign was unsuccessful.¹²¹

In 1950, Murray sought a job with the American Civil Liberties Union (ACLU), but lost out because ze was too old and too experienced.¹²² Zir biographer writes that after years of facing race and sex discrimination, Murray now faced age discrimination.¹²³

In 1951, after three years of work, Murray published with the Women's Division of the Board of Missions of the Methodist Church a foot-thick book called "States' Laws on Race and Color."¹²⁴ Thurgood Marshall called it the "Bible" for civil rights litigators.¹²⁵

In the 1950s, Murray was in practice in New York City, at the Paul, Weiss, Rifkind, Garrison & Wharton law firm.¹²⁶ The firm "employed only two women among its forty associates. Neither was assigned to litigation."¹²⁷ Ruth Bader Ginsburg had a Summer job with Paul Weiss in 1958 when, after two years at Harvard Law School (where she served on the Law Review), she transferred to Columbia because her husband had graduated from Harvard Law School and had a job in New York City.¹²⁸ But Ruth Bader Ginsburg did not get an offer of a permanent job with Paul Weiss: despite her "obvious talent," "she was also a wife and mother, roles that," in the view of at least one partner, "disqualified her for permanent employment."¹²⁹

In 1960, Murray joined the faculty of the Ghana School of Law.¹³⁰ Murray taught students to challenge authority and to inquire.¹³¹ Murray helped a lawyer defending leaders of the movement opposing the government; ze was threatened with deportation and found government investigators sitting in zir class.¹³²

¹²⁰ RICHARDS, *supra* note 22, at 90; ROSENBERG, JANE CROW, *supra* note 2, at 188–89.

¹²¹ RICHARDS, *supra* note 22, at 90; ROSENBERG, JANE CROW, *supra* note 2, at 188–89.

¹²² ROSENBERG, JANE CROW, *supra* note 2, at 188–89.

¹²³ *Id.*

¹²⁴ *Id.* at 187.

¹²⁵ *Id.*

¹²⁶ *See id.* at 208–09.

¹²⁷ ROSENBERG, JANE CROW, *supra* note 2, at 209.

¹²⁸ *Id.* at 212.

¹²⁹ *Id.*

¹³⁰ *Id.* at 221.

¹³¹ *Id.* at 232.

¹³² RICHARDS, *supra* note 22, at 207–08; ROSENBERG, JANE CROW, *supra* note 2, at 219–238; SONG IN A WEARY THROAT: AN AMERICAN PILGRIMAGE, *supra* note 12, at 333–343.

In 1962, at the request of Eleanor Roosevelt, Murray became a member of the Committee on Political and Civil Rights of President Kennedy's Presidential Commission on the Status of Women (PCSW).¹³³ Murray produced for the Commission an important memorandum that sought to bring the proponents and opponents of the Equal Rights Amendment together in a program of litigating women's rights issues under the Equal Protection Clause of the Fourteenth Amendment.¹³⁴ Regarding the NAACP as a model, Murray urged that lawyers and social scientists collaborate, doing case-by-case litigation and producing law review articles and social science research while organizers marshalled public support.¹³⁵ "As of 1963 there was no law review article on how to attack sex-based discrimination, no team of lawyers working on a legal strategy, no NAACP for women, . . . no group of social scientists prepared to present . . . evidence . . . that discrimination caused women . . . specific harm."¹³⁶

In 1963, Murray was one of several Black women who strongly protested the exclusion of women from the roster of speakers at the March on Washington and the group of civil rights leaders who met with President Kennedy after the March.¹³⁷ Murray also helped to organize a protest against A. Philip Randolph's pre-March speech at the National Press Club because the Club did not accept female members and required women to sit in the balcony.¹³⁸ Although Murray was staying in Maida Springer's apartment at the time, Springer's refusal to picket Mr. Randolph at the Press Club led Murray to leave Springer's home and caused a long-term disruption in their friendship.¹³⁹

Following the March, on August 29, the National Council of Negro Women (NCNW) met in Washington to discuss "After the March – What?"¹⁴⁰ At this meeting, Murray made a strong case for protesting the ways in which male civil rights advocates treated women.¹⁴¹ Dorothy Height, longtime president of the NCNW, invited Murray to speak at

¹³³ ROSENBERG, JANE CROW, *supra* note 2, at 4; FORGOTTEN HEROES: INSPIRING AMERICAN PORTRAITS FROM OUR LEADING HISTORIANS, *supra* note 63, at 281.

¹³⁴ ROSENBERG, JANE CROW, *supra* note 2, at 251–52.

¹³⁵ FORGOTTEN HEROES: INSPIRING AMERICAN PORTRAITS FROM OUR LEADING HISTORIANS, *supra* note 63, at 283–84; ROSENBERG, JANE CROW, *supra* note 2, at 242–61.

¹³⁶ *Id.* at 284–85.

¹³⁷ ROSENBERG, JANE CROW, *supra* note 2, at 267–71.

¹³⁸ RICHARDS, *supra* note 22, at 263.

¹³⁹ *Id.* at 263–64.

¹⁴⁰ HEIGHT, *supra* note 20, at 146.

¹⁴¹ ROSENBERG, JANE CROW, *supra* note 2, at 271.

the Council's November conference.¹⁴² At that conference, Murray delivered an important speech, "The Negro Woman in the Quest for Equality"; the speech "influenced and resonated among black women in particular."¹⁴³

Murray played a key role in adding "sex" to Title VII of the Civil Rights Act of 1964 and later strongly pushed the Equal Employment Opportunity Commission (EEOC) to seriously enforce the prohibition on sex discrimination.¹⁴⁴ In 1965, ze became the first African American to receive a Doctor of Juridical Science degree from Yale Law School.¹⁴⁵ In December 1965, Murray and Mary Eastwood published "Jane Crow and the Law" in the *George Washington Law Review*.¹⁴⁶ Also in 1965, ACLU Board member Dorothy Kenyon recruited Murray to join the ACLU board.¹⁴⁷

Almost immediately, Murray and Kenyon worked on an important case from "Bloody" Lowndes County, Alabama, a key civil rights battleground located between Selma and Montgomery.¹⁴⁸ In Lowndes County, Blacks greatly outnumbered whites, but Blacks were not permitted to vote or serve on juries.¹⁴⁹ "The county was 80 percent black and over 50 percent female, but juries in Lowndes were invariably

¹⁴² *Id.* at 270–71.

¹⁴³ *Id.* at 271; Dorothy I. Height, *We Wanted the Voice of a Woman to Be Heard, Black Women and the 1963 March on Washington*, in *SISTERS IN THE STRUGGLE: AFRICAN AMERICAN WOMEN IN THE CIVIL RIGHTS-BLACK POWER MOVEMENT* 83, 89–90 (BETTYE COLLIER-THOMAS & V.P. FRANKLIN eds. 2001); HEIGHT, *supra* note 20, at 146. The memoir does not make clear that the speech was delivered at the November conference, not the August 29 meeting. *See id.* at 89.

¹⁴⁴ ROSENBERG, JANE CROW, *supra* note 2, at 5.

¹⁴⁵ *Id.* at 183, 241 (stating that when Murray first sought housing in New Haven in 1961, ze was denied an apartment because of zir race). In 2017, Yale University created Pauli Murray College. *Pauli Murray College*, YALE UNIV., <https://paulimurray.yalecollege.yale.edu> (last visited Apr. 15, 2020).

¹⁴⁶ Pauli Murray & Mary O. Eastwood, *Jane Crow and the Law: Sex Discrimination and Title VII*, 34 GEO. WASH. L. REV. 232 (1965) (exploring how the Constitution may protect women from discrimination and interpreting the sex discrimination provisions of the Civil Rights Act of 1964); ROSENBERG, JANE CROW, *supra* note 2, at 289 (stating that, as Murray had predicted, the article came to be cited "to kingdom come").

¹⁴⁷ FORGOTTEN HEROES: INSPIRING AMERICAN PORTRAITS FROM OUR LEADING HISTORIANS, *supra* note 63, at 285; ROSENBERG, JANE CROW, *supra* note 2, at 293.

¹⁴⁸ FORGOTTEN HEROES: INSPIRING AMERICAN PORTRAITS FROM OUR LEADING HISTORIANS, *supra* note 63, at 285.

¹⁴⁹ *Id.* at 285; TAYLOR BRANCH, *AT CANAAN'S EDGE: AMERICA IN THE KING YEARS 1965-68* at 6 (2006); STOKELY CARMICHAEL WITH EKWUEME MICHAEL THELWELL, *READY FOR REVOLUTION: THE LIFE AND STRUGGLES OF STOKELY CARMICHAEL (KWAME TURE)* at 457 (2003).

100 percent white and male”¹⁵⁰ In 1965, two clergy members supporting civil rights activities were shot by a “self-styled deputy” sheriff, Tom Coleman.¹⁵¹ A 26 year old white Catholic priest from Chicago, Richard Morrisoe, was paralyzed. Jonathan Daniels, a 26-year-old white Episcopal seminarian from Keene, NH was killed.¹⁵² When Coleman was prosecuted, he was tried by a jury from which all Blacks were excluded; he was acquitted.¹⁵³ Black men were excluded from Alabama juries by custom. Black women, however – all women – were excluded from Alabama juries by statute.¹⁵⁴

Alabama, South Carolina, and Mississippi barred women from juries by statute; twenty-one other states limited female service to volunteers or those who did not seek special exemptions that were available only to women.¹⁵⁵ The U.S. Supreme Court had approved the latter in *Hoyt v. Florida*, stating that this was reasonable because “woman is still regarded as the center of home and family life.”¹⁵⁶

¹⁵⁰ FORGOTTEN HEROES: INSPIRING AMERICAN PORTRAITS FROM OUR LEADING HISTORIANS, *supra* note 63, at 285; BRANCH, *supra* note 149, at 6; *see also* CLAYBORNE CARSON, IN STRUGGLE: SNCC AND THE BLACK AWAKENING OF THE 1960S 42 (1981) (stating that in 1966, after enactment of the Voting Rights Act, there still was not a single Black person registered to vote in Lowndes County).

¹⁵¹ BRANCH, *supra* note 149, at 302–04. Daniels “stepped in front of [a] bullet that would have likely killed” Ruby Sales, then 17 years old, who became a “renowned theologian and indefatigable civil rights fighter. . . .” Abby Zimet, *In Praise of Jonathan Daniels and Ruby Sales: Greater Love Hath No Man Than This*, COMMON DREAMS, (Mar. 20, 2019) <https://www.commondreams.org/further/2019/03/20/praise-jonathan-daniels-and-ruby-sales-greater-love-hath-no-man>; Antonia Blumberg, *Civil Rights Activist Honors Man Who Died Taking Bullet Meant for Her*, HUFFINGTON POST (Oct. 9, 2015), https://www.huffpost.com/entry/ruby-sales-jonathan-daniels_n_5616c004e4b0082030a1a106; Michael E. Ruane, *Black Civil Rights Activist Recalls White Ally Who Took a Shotgun Blast for Her*, THE WASH. POST (Aug. 16, 2015), https://www.washingtonpost.com/local/black-civil-rights-activist-recalls-white-ally-who-took-a-shotgun-blast-for-her/2015/08/16/4e562dd8-3b74-11e5-8e98-115a3cf7d7ae_story.html.

¹⁵² ROSENBERG, JANE CROW, *supra* note 2, at 293. Daniels had gone to Selma after Dr. King’s call to clergy after Bloody Sunday. *See* BRANCH, *supra* note 149, at 303–04. He and a fellow seminarian, Judith Upham (one of the few female seminarians at the time), soon retrieved their belongings from Boston and returned to their “religious mission” in Selma, participating in the March to Montgomery and attempting to integrate a white church. *Id.* at 74, 172, 184; CARMICHAEL, *supra* note 149, at 466–67. In July of 1965, Daniels returned to Alabama alone. Carmichael and Daniels became friendly, and Carmichael allowed Daniels and Morrisoe to participate in the Lowndes County actions although Carmichael and others opposed participation by whites for several reasons. *Id.* The interracial group was arrested in Lowndes County and days later released into an apparent ambush; that is when Daniels was murdered. *Id.* at 467–70. Carmichael later went, with his mother, to tell Daniels’s parents about their son’s murder. *Id.* at 470. Carmichael wrote that while “Jon’s murder . . . wasn’t the first death we’d experienced . . . it was in some ways the one closest to me as an organizer.” *Id.*

¹⁵³ BRANCH, *supra* note 149, at 312; ROSENBERG, JANE CROW, *supra* note 2, at 293.

¹⁵⁴ ROSENBERG, JANE CROW, *supra* note 2, at 293–94.

¹⁵⁵ *Id.* at 292.

¹⁵⁶ 368 U.S. 57, 62 (1961).

In the wake of the attack on Father Morrisoe and Jonathan Daniels, the ACLU challenged the exclusion of women from juries in Alabama in *White v. Crook*.¹⁵⁷ The plaintiff, Ms. Gardenia White, was a Black wife, mother, and ardent civil rights activist.¹⁵⁸ The defendant, Bruce Crook, was a white, male member of the Lowndes County Jury Commission.¹⁵⁹ Murray and Kenyon, ACLU stalwarts who had fought tenaciously against sex discrimination, worked on the brief, with Murray writing the part that addressed the intersection of race and sex discrimination.¹⁶⁰ The three-judge district court ruled unanimously for Ms. Gardenia White, holding that “a state’s complete exclusion of women from jury service is “so arbitrary and unreasonable as to be unconstitutional.”¹⁶¹

The Student Non-Violent Coordinating Committee (SNCC) had established a separate political organization in Lowndes County.¹⁶² Since the state Democratic party used the words “white supremacy” in its slogan, the new party, the Lowndes County Freedom Organization (LCFO), adopted as its emblem a snarling black panther.¹⁶³ This later was adopted by the Community Alert Patrol in the Watts area of Los Angeles and then by the Black Panther Party for Self-Defense.¹⁶⁴

Murray’s attacks on the federal government for failing to protect women against gender discrimination persuaded Betty Friedan to join Murray in founding the National Organization for Women (NOW) in 1966.¹⁶⁵ Murray developed for NOW a sophisticated program of litigation under the Fifth and Fourteenth Amendments, delaying consideration of the controversial Equal Rights Amendment.¹⁶⁶ Soon, however she became disappointed in NOW’s 1967 endorsement of the Equal Rights

¹⁵⁷ ROSENBERG, JANE CROW, *supra* note 2, at 294–95.

¹⁵⁸ *Id.*

¹⁵⁹ FORGOTTEN HEROES: INSPIRING AMERICAN PORTRAITS FROM OUR LEADING HISTORIANS, *supra* note 63, at 285.

¹⁶⁰ *See id.*

¹⁶¹ ROSENBERG, JANE CROW, *supra* note 2, at 296; *White v. Crook*, 251 F. Supp. 401, 409 (M.D. Ala. 1966).

¹⁶² CARSON, *supra* note 149, at 153.

¹⁶³ *Id.* at 154–56; CARMICHAEL, *supra* note 149, at 462–74.

¹⁶⁴ JOSHUA BLOOM & WALDO E. MARTIN, JR., *BLACK AGAINST EMPIRE: THE HISTORY AND POLITICS OF THE BLACK PANTHER PARTY* 39–44 (2013); CARMICHAEL, *supra* note 149, at 475–77.

¹⁶⁵ FORGOTTEN HEROES: INSPIRING AMERICAN PORTRAITS FROM OUR LEADING HISTORIANS, *supra* note 63, at 285–86 (naming also as co-founders Mary Eastwood, Catherine East, and Sonia Pressman); *see also* SARA EVANS, *PERSONAL POLITICS: THE ROOTS OF WOMEN’S LIBERATION IN THE CIVIL RIGHTS MOVEMENT & THE NEW LEFT* 18–19 (1979) (stating that Rep. Martha Griffiths was also one of the women who “urged the creation of an action group . . .”).

¹⁶⁶ *See* ROSENBERG, JANE CROW, *supra* note 2, at 307–08.

Amendment (ERA).¹⁶⁷ “By the Fall of 1967, Murray had come to regard poverty, which disproportionately affected women – and especially African American women and their children – as the country’s most pressing concern” and did not consider the ERA responsive to it.¹⁶⁸

In September 1970, however, Murray and fellow ACLU Board Member Dorothy Kenyon urged the ACLU to “abandon its emphasis on the Fourteenth Amendment as the best hope for women’s rights and to endorse the ERA.”¹⁶⁹ The ACLU did so and “the next year defined women’s rights as its ‘top priority,’ creating the Women’s Rights Project.”¹⁷⁰ The key figure in the ACLU’s campaign was law professor Ruth Bader Ginsburg¹⁷¹ When, later in the 1970s, “Ginsburg briefed what became her first Supreme Court victory,” she used the work that Pauli Murray and Dorothy Kenyon had done in *White v. Crook* and, in a rare tribute, put their names on the brief in *Reed v. Reed*.¹⁷²

¹⁶⁷ FORGOTTEN HEROES: INSPIRING AMERICAN PORTRAITS FROM OUR LEADING HISTORIANS, *supra* note 63, at 286; ROSENBERG, JANE CROW, *supra* note 2, at 307–08.

¹⁶⁸ ROSENBERG, JANE CROW, *supra* note 2, at 307–09; PROUD SHOES, *supra* note 9, at 348–53.

¹⁶⁹ SAMUEL WALKER, IN DEFENSE OF AMERICAN CIVIL LIBERTIES: A HISTORY OF THE ACLU 304 (1990).

¹⁷⁰ *Id.*; RUTH BADER GINSBURG, ET AL., MY OWN WORDS 115 (2016); *cf.* FORGOTTEN HEROES: INSPIRING AMERICAN PORTRAITS FROM OUR LEADING HISTORIANS, *supra* note 63, at 286.

¹⁷¹ WALKER, *supra* note 169, at 304.

¹⁷² ROSENBERG, JANE CROW, *supra* note 2, at 343; *see also* FORGOTTEN HEROES: INSPIRING AMERICAN PORTRAITS FROM OUR LEADING HISTORIANS, *supra* note 63, at 287 (stating that “[i]n recognition of Dorothy Kenyon’s decades of preparatory work and Pauli Murray’s crucial addition of the race-sex analogy, Ginsburg placed their names alongside her own as authors of the ACLU brief in *Reed*”); *Reed v. Reed*, 404 U.S. 71 (1971); *see also* MURRAY & WARE, *supra* note 87, at 138–39 (quoting a March 2005 personal communication from Justice Ginsburg to Anne Firor Scott, Justice Ginsburg writing that she had placed Murray’s and Kenyon’s names on the brief and that “[b]oth women had urged, a decade and more earlier, arguments that courts were not prepared to hear until the 1970s . . .”). *See also* Linda K. Kerber, *Before Frontiers There Was Reed: Ruth Bader Ginsburg and the Constitutional Transformation of the Twentieth Century*, in *The Legacy of Ruth Bader Ginsburg* 31, 37 (Scott Dodson, ed. 2015) (describing Ginsburg’s brief in *Reed v. Reed* as “[l]eaning on Pauli Murray’s classic essay ‘Jane Crow and the Law’ . . .”). The movie, “On the Basis of Sex,” which describes Justice Ginsburg’s career, pays tribute to Murray and Kenyon by portraying the former as participating in a moot court at the Ginsburgs’ apartment and the latter as meeting with Ginsburg and her daughter, Jane. Apparently, neither of these engagements really happened, but Ginsburg had her nephew, Daniel Stiepleman, the screenwriter, include them in tribute to Murray and Kenyon, a testament to their importance to the movement that Ginsburg has come to personify. *See* Alex Barasch, *What’s Fact and What’s Fiction in On the Basis of Sex; Was Marty Really Such a Babe? We Fact-Check the RBG Biopic*, SLATE’S BROW BEAT (Dec. 24, 2018, 10:01 AM), <https://slate.com/culture/2018/12/on-the-basis-of-sex-accuracy-rbg-biopic-fact-fiction.html>; *see also* Marisa Bate, *Born to Protest: Legal Trailblazer Pauli Murray Takes Her Rightful Place in History*, BITCHMEDIA (Dec. 20, 2018, 10:21 AM), <https://www.bitchmedia.org/article/on-the-basis-of-sex-pauli-murray> (quoting Murray’s biographer, Professor Rosalind Rosenberg, as stating that the moot court never happened); & Anna Menta, *Ruth Bader Ginsburg Loved ‘On the Basis of Sex’ – After She Made These Changes*, NEWSWEEK MAGAZINE (Dec. 19, 2018, 7:46 AM), <https://www.newsweek.com/2018/12/28/basis-sex-ruth-bader-ginsburg-biopic->

In 1967, Murray taught at Benedict College in South Carolina.¹⁷³ Ze then taught at Brandeis University, but later left a chaired tenured professorship there to study at the General Theological Seminary in New York City.¹⁷⁴ It was at the age of 63, in June 1973, that ze entered the Seminary.¹⁷⁵ During zir three years in the Seminary, the Episcopal General Convention rejected the ordination of women three times.¹⁷⁶ Murray was ordained on January 8, 1977,¹⁷⁷ becoming one of the first female Episcopal priests and “the first black female Episcopal priest,” extending critical thinking on race and gender to the realm of theology.¹⁷⁸ Ze “laid the foundation for what would become known as Womanist Theology, . . . attentive not only to the struggles of women of color but also to the poorest among them.”¹⁷⁹ Murray wrote:

It was my destiny to be the descendant of slave owners as well as slaves, to be of mixed ancestry, to be biologically and psychologically integrated in a world where the separation of the races was upheld by the Supreme Court of the United States as the fundamental law of our Southland. My entire life’s quest has been for spiritual integration, and this quest has led me ultimately to Christ, in whom there is no East or West, no North or South, no Black or White, no Red or Yellow, no Jew or Gentile, no Islam or Buddhist, no Baptist, Methodist, Episcopalian or Roman Catholic, no Male or Female. There is no Black Christ, no White Christ, no Red Christ – although these images may have transitory cultural value. There is only Christ, the Spirit of Love.¹⁸⁰

Murray died on July 1, 1985, aged seventy-four.¹⁸¹

1263948.html (quoting Justice Ginsburg as having noted on the first draft of the screenplay: “People should know that I built my career on the shoulders of activists like Dorothy Kenyon and Pauli Murray”).

¹⁷³ ROSENBERG, JANE CROW, *supra* note 2, at 306–07, 313–16.

¹⁷⁴ *Id.* at 316–27, 329–32, 351–52, 357–74.

¹⁷⁵ Gilmore, *supra* note 24, at 442.

¹⁷⁶ *Id.* at 443.

¹⁷⁷ *Id.*

¹⁷⁸ ROSENBERG, JANE CROW, *supra* note 2, at 5.

¹⁷⁹ *Id.*

¹⁸⁰ Pauli Murray, “Father’s Day Sermon,” June 15, 1975, St. Philip’s Church in New York, in Murray, *Pauli Murray: Selected Sermons and Writings* 15–16, ed. Anthony B. Pinn (Maryknoll, N.Y.: Orbis Books, 2006). I am indebted to Professor Beth Harris, Ph.D., for this quotation.

¹⁸¹ ROSENBERG, *supra* note 2, at 385.

Murray published much journalism, a “family memoir,” a volume of poetry, and an autobiography.¹⁸² In the family memoir, *Proud Shoes*, ze “recounted the history of a long civil rights movement to which members of her family had contributed for over a century, overcoming hurdles along the way that most whites had never encountered and could barely imagine.”¹⁸³ Zir autobiography, *Song in a Weary Throat*, was published two years after zir death.¹⁸⁴

II. LESSONS

Pauli Murray’s life offers important lessons for us today. Tellingly, Murray calls us to focus on indivisibility, economic rights, history, multiple forms of advocacy, education, and kindness.

1. *Human rights are indivisible.*

In 1989, legal scholar Kimberlé Crenshaw coined the term “intersectionality,” which has been defined as “an intellectual and political framework and practice that recognizes the simultaneity and interrelated nature of various systems of oppression – namely, racism, sexism, capitalism, imperialism, ableism, and hetero-patriarchy.”¹⁸⁵ Poet Elizabeth Alexander has written that Pauli “Murray was an intersectional analyst on race, gender, and class before those who would develop the theory and the phrase were born.”¹⁸⁶ Murray’s friend, colleague, and mentor,

¹⁸² PROUD SHOES, *supra* note 9, at xi–xii (called a “family memoir” and “a biography of my grandparents” in Murray’s 1978 Introduction, at xii); DARK TESTAMENT AND OTHER POEMS, *supra* note 1; SONG IN A WEARY THROAT: AN AMERICAN PILGRIMAGE, *supra* note 12.

¹⁸³ ROSENBERG, JANE CROW, *supra* note 2, at 203.

¹⁸⁴ BELL-SCOTT, *supra* note 34, at xiv.

¹⁸⁵ Crenshaw, *supra* note 5, at 139; *see* RANSBY, *supra* note 6, at 174. Professor Ransby also says that the concept originates in Sojourner Truth’s Ain’t I a Woman? speech in 1851. For Sojourner Truth’s speech *see* BELL HOOKS, AIN’T I A WOMAN: BLACK WOMEN AND FEMINISM 159–60 (1981).

¹⁸⁶ Elizabeth Alexander, *Introduction* to DARK TESTAMENT AND OTHER POEMS xi (1970). Dr. King reiterated the connections among forms of oppression by repeatedly inveighing against the triple threats of racism, capitalism, and militarism and in his much-quoted admonition that “injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly affects all indirectly.” Dr. Martin Luther King, Jr., *Letter from Birmingham City Jail*, in A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS OF MARTIN LUTHER KING, JR. 289, 290 (James M. Washington, ed. 1986); *see also* Martin Luther King, Jr., *Beyond Vietnam* in A CALL TO CONSCIENCE: THE LANDMARK SPEECHES OF DR. MARTIN LUTHER KING, JR. (Clayborne Carson & Kris Shepard, eds., 2001)) 133, 133–37 (for Dr. King’s admonitions against the “triplets” of racism, militarism,

Caroline Ware, described her own life as one focused on “workers’ education, . . . the consumer movement, . . . the integration of racial and ethnic groups . . .[,] civil rights . . . and . . . the women’s field.”¹⁸⁷ The same was true of Pauli Murray.¹⁸⁸

Murray’s life and work emphasized the centrality of intersectionality. Murray analogized the oppression of Blacks in the South to that of Jews in Germany as early as 1938.¹⁸⁹ Building on Murray’s experiences at Howard and with Harvard, Murray and co-author Mary O. Eastwood emphasized the relationships between race discrimination and sex discrimination.¹⁹⁰

Murray’s life evidences relentless insistence on respect for the dignity of every human being and each person’s full opportunity for material, emotional, and psychological sustenance, education, and justice.¹⁹¹ Murray’s inaugural sermon, entitled “Healing and Reconciliation,” called for “the reconciliation of groups of Americans now alienated from one another by reason of race, color, religion, sex (gender), age, sex preference, political and theological difference, economic and social status, and other man-made barriers.”¹⁹²

2. *Economic rights are an essential element of human rights.*

Perhaps the most neglected, or at least most isolated, of the human rights crying out for vindication are economic rights. Although some advocates and scholars long have linked economic justice with racial and sexual justice, economic/workers’/labor claims often have been treated as separate from and have received much less attention than what are called “civil rights” claims.¹⁹³ Efforts to unite white and non-

and racism). Unfortunately, Dr. King did not recognize sexism as an abhorrent basis for discrimination. See, e.g., RANSBY, ELLA BAKER, *supra* note 20, at 174 (referencing Dr. “King’s sexist attitudes toward women . . .”).

¹⁸⁷ Thomas Dublin, *Caroline F. Ware: Crusader for Social Justice*, in FORGOTTEN HEROES: INSPIRING AMERICAN PORTRAITS FROM OUR LEADING HISTORIANS 251, 252. (Susan Ware, ed. 1998) “Like the abolitionists of her grandparents’ generation, Caroline Ware became an advocate for a variety of social justice causes, supporting workers’ education, New Deal protection legislation, consumers’ rights, civil rights, economic development in the Third World, and women’s rights.” *Id.* at 258.

¹⁸⁸ Alexander, *supra* note 186.

¹⁸⁹ See ROSENBERG, JANE CROW, *supra* note 2, at 69.

¹⁹⁰ Murray & Eastwood, *supra* note 146, at 232–35.

¹⁹¹ See, e.g., ROSENBERG, JANE CROW, *supra* note 2.

¹⁹² *Id.* at 378.

¹⁹³ See, e.g., Robert Korstad & Nelson Lichtenstein, *Opportunities Found and Lost: Labor, Radicals, and the Early Civil Rights Movement*, 75 J. AM. HIST. 786, 800 (1988) (stating that after 1947, “a decade-long decline in working-class black activism destroyed the organizational coherence and ideological élan of the labor-based civil rights movement”). In the contest for

white workers have been powerfully undermined since distinctions first were drawn between enslaved Black people and white servants or employees.¹⁹⁴

For all the purported homage to Dr. King, there is general neglect of one of his most powerful speeches, delivered on March 18, 1968, in the course of the sanitation workers' strike in Memphis, Tennessee.¹⁹⁵ Addressing workers and their supporters, he said:

All labor has dignity. *** You are reminding . . . the nation that it is a crime for people to live in this rich nation and receive starvation wages. *** [I]t is criminal to have people working on a full-time basis and a full-time job getting part-time income. *** You are going beyond purely civil rights to questions of human rights. *** Now our struggle is for genuine equality, which means economic equality.¹⁹⁶

He concluded this forceful speech by urging “a general work stoppage in the city of Memphis.”¹⁹⁷ Labor historian Michael Honey and other scholars and advocates have focused new attention on the long-term commitment to economic justice by the NAACP, Dr. King, and other civil rights advocates.¹⁹⁸

most-neglected claims, however, a strong case can be made against neglect of transgender persons and other sexual or gender minorities. See, e.g., Joshua Aaron Jones, *Title IX's Substantive Equity Mandate for Transgender Persons in American Law Schools: A Call to Disaggregate SOGI Data*, 44 N.Y.U. REV. OF LAW & SOCIAL CHANGE 399 (2020).

¹⁹⁴ See, e.g., W.E.B. DU BOIS, *BLACK RECONSTRUCTION: 1860-1880* at 680 (1935); C. VANN WOODWARD, *THE STRANGE CAREER OF JIM CROW* 73–77, 100–02 (1957); ERIC FONER, *RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION 1863-1877* at 479–80, 595–98 (1988).

¹⁹⁵ See MARTIN LUTHER KING, JR., *ALL LABOR HAS DIGNITY* 170 (Michael K. Honey ed. 2011).

¹⁹⁶ *Id.* at 170–78.

¹⁹⁷ *Id.* at 178; see also MICHAEL K. HONEY, *GOING DOWN JERICHO ROAD: THE MEMPHIS STRIKE, MARTIN LUTHER KING'S LAST CAMPAIGN* 287–308 (2007) (discussing general strikes at 304) [hereinafter *GOING DOWN JERICHO ROAD: THE MEMPHIS STRIKE, MARTIN LUTHER KING'S LAST CAMPAIGN*]; MICHAEL K. HONEY, *TO THE PROMISED LAND: MARTIN LUTHER KING AND THE FIGHT FOR ECONOMIC JUSTICE* 155 (2018) [hereinafter *TO THE PROMISED LAND: MARTIN LUTHER KING AND THE FIGHT FOR ECONOMIC JUSTICE*].

¹⁹⁸ *GOING DOWN JERICHO ROAD: THE MEMPHIS STRIKE, MARTIN LUTHER KING'S LAST CAMPAIGN*, *supra* note 197; *TO THE PROMISED LAND: MARTIN LUTHER KING AND THE FIGHT FOR ECONOMIC JUSTICE*, *supra* note 197; MARTIN LUTHER KING, JR., *THE RADICAL KING* xi (Cornel West, ed. 2015) (stating that the fulfillment of Dr. King's dream “was for all poor and working people to live lives of decency and dignity”); GILMORE, *supra* note 24, at 9; (stating that the movement sought, among other things, “to eliminate the economic injustices wrought by slavery, debt peonage, and a wage labor system based on degraded black labor”); GOLUBOFF, *supra* note 107 (discussing the campaign for economic and political rights); PENIEL E. JOSEPH, *THE SWORD AND THE SHIELD: THE REVOLUTIONARY LIVES OF MALCOLM X AND MARTIN LUTHER KING JR* (2020); THOMAS F. JACKSON, *FROM CIVIL RIGHTS TO HUMAN RIGHTS: MARTIN LUTHER*

3. *The Human Rights Movement is Long as Well as Broad*

Pauli Murray's life also illuminates the length – or depth – of the movement. Jacquelyn Dowd Hall published a seminal article in 2005 about “The Long Civil Rights Movement”¹⁹⁹; I amend this to “the long human rights movement” to recognize that Professor Hall explicitly addresses not only what we usually label “civil rights” – concerns of race and color – but also workers' rights, women's rights, and other social and economic claims all called “human rights” until red-baiting labelled “human rights” as “communistic” and drove the NAACP to eschew the “human rights” language.²⁰⁰ Professor Hall's message is that this long movement, rooted in the 1930s' campaigns for workers' rights, unionism, women's' rights, and racial equity, evoked a structural response from governments and private actors that beat back New Deal labor reforms and the regulatory state generally as well as efforts at the racial integration of schools and neighborhoods.²⁰¹ In Pauli Murray's own life, this “long movement” went back to the Civil War; Murray often was inspired by remembrance of her grandfather Robert Fitzgerald, who had fought for Black freedom in the Civil War and then went South to teach freedpersons.²⁰²

Professor Hall described the resegregation she deplored as “the outcome, in an atmosphere of judicial hostility, of long-term failures to limit residential segregation, halt the decay of inner cities, prevent urban sprawl, address growing class divisions, and alter school-funding arrangements that favor suburban schools.”²⁰³ She cited a well-funded, effective campaign by the New Right to persuade working men and women that they were threatened and hurt by advocates for racial and ethnic minorities and workers' and women's rights.²⁰⁴ Historian Nancy

KING, JR., AND THE STRUGGLE FOR ECONOMIC JUSTICE (2007); BYNUM, *supra* note 60; ANDERSON, *supra* note 60; D'EMILIO, *supra* note 49; ANDERSON, *supra* note 49; RUSTIN, *supra* note 49; DENTON L. WATSON, LION IN THE LOBBY: CLARENCE MITCHELL, JR.'S STRUGGLE FOR THE PASSAGE OF CIVIL RIGHTS LAWS (1990).

¹⁹⁹ Jacquelyn Dowd Hall, *The Long Civil Rights Movement and the Political Uses of the Past*, 91 J. AMER. HIST. 1233 (2005).

²⁰⁰ CAROL ANDERSON, EYES OFF THE PRIZE: THE UNITED NATIONS AND THE AFRICAN AMERICAN STRUGGLE FOR HUMAN RIGHTS, 1944-1955 at 5-7 (2003); *see also* GOLUBOFF, *supra* note 81, at 219 (referencing “southern conservatives who tainted all racial change with the brush of Communism”); MARY L. DUDZIAK, COLD WAR CIVIL RIGHTS: RACE AND THE IMAGE OF AMERICAN DEMOCRACY 5-9 (2000).

²⁰¹ HALL, *supra* note 199, at 1233; IRA KATZNELSON, WHEN AFFIRMATIVE ACTION WAS WHITE: AN UNTOLD HISTORY OF RACIAL INEQUALITY IN TWENTIETH-CENTURY AMERICA 53-69 (2005).

²⁰² SONG IN A WEARY THROAT: AN AMERICAN PILGRIMAGE, *supra* note 12, at 4.

²⁰³ Hall, *supra* note 199, at 1257.

²⁰⁴ *See id.* at 1235, 1237.

MacLean develops this further, describing a deliberate, long-term, massively funded, well designed and executed national campaign to protect very wealthy Americans from government attempts to use their resources to serve others, teaching that the only “economic rights” are the rights of the haves to keep what they possess and prevent government from using those resources for others, to “save capitalism from democracy – permanently.”²⁰⁵

Pauli Murray was not the first or the last to challenge racial segregation in transportation or to organize sit-ins in restaurants.²⁰⁶ In 1884, Ida B. Wells refused to move from the ladies’ car on a railroad train into the smoking car, and sued the railroad for its treatment of her.²⁰⁷ In 1942, Bayard Rustin began a lifetime practice of sitting in a bus section reserved for whites and refusing to move.²⁰⁸ Ella Baker also challenged discriminatory treatment on buses and railroads in 1942 and thereafter.²⁰⁹ In 1944, Second Lieutenant Jack Roosevelt – “Jackie” – Robinson refused to give up his seat on a bus in Killen, Texas, near Camp Hood, four female Howard students refused to move to the rear of a bus in Virginia, and Ms. Irene Morgan refused to move to the back of a bus in the same state.²¹⁰ The Supreme Court vindicated Ms. Morgan’s action in 1946, and in 1947 Bayard Rustin and George Houser led the Journey of Reconciliation through the upper South to test implementation of that decision.²¹¹ In 1953, Reverend T.J. Jemison led a bus boycott in Baton Rouge, Louisiana.²¹²

²⁰⁵ NANCY MACLEAN, *DEMOCRACY IN CHAINS: THE DEEP HISTORY OF THE RADICAL RIGHT’S STEALTH PLAN FOR AMERICA* xx, xiii–xxviii (2017); *see also*, STEVEN M. TELES, *THE RISE OF THE CONSERVATIVE LEGAL MOVEMENT: THE BATTLE FOR CONTROL OF THE LAW* 182 (2008) & KEN I. KERSCH, *CONSERVATIVES AND THE CONSTITUTION: IMAGINING CONSTITUTIONAL RESTORATION IN THE HEYDAY OF AMERICAN LIBERALISM* viii–x (2019).

²⁰⁶ *See* IDA B. WELLS, *CRUSADE FOR JUSTICE: THE AUTOBIOGRAPHY OF IDA B. WELLS* 18–20 (1970).

²⁰⁷ *Id.*

²⁰⁸ D’EMILIO, *supra* note 49, at 46–47; TAYLOR BRANCH, *PARTING THE WATERS: AMERICA IN THE KING YEARS 1954–63* 295–96 (1988) (showing that Ben West, the assistant district attorney who interviewed Rustin after Rustin’s first arrest for such conduct and then released Rustin without pressing charges, was the mayor of Nashville in 1960; in the face of crowds protesting arrests for sit-ins, when Diane Nash asked if he recommended desegregation of lunch counters, he answered, “Yes.”).

²⁰⁹ RANSBY, ELLA BAKER, *supra* note 20, at 124–27.

²¹⁰ RICHARD GERGEL, *UNEXAMPLED COURAGE: THE BLINDING OF SGT. ISAAC WOODARD AND THE AWAKENING OF PRESIDENT HARRY S. TRUMAN AND JUDGE J. WATIES WARING* 11–12 (2019); GILMORE, *supra* note 24, at 329; WARE, *supra* note 44, at 187; *Morgan v. Virginia*, 328 U.S. 373 (1946).

²¹¹ ARSENAULT, *supra* note 117, at 33–55; *see supra* text accompanying notes 117–19.

²¹² BRANCH, *supra* note 212, at 295.

In 1943, the interracial Chicago Committee of Racial Equality began restaurant sit-ins; later in the 1940s in New York City, several restaurants were successfully sued for refusing to serve Blacks and the interracial Committee on Civil Rights in East Manhattan “used 158 volunteers in interracial teams of testers to measure . . . discrimination in the area of the United Nations . . .”²¹³ In 1955, “William Clay organized an NAACP Youth Council in St. Louis”; after a year of demonstrations, it was “able to desegregate dining facilities at department stores.”²¹⁴ Between 1957 and 1960, “[c]ivil rights activists . . . conducted sit-ins . . . in at least sixteen cities: St. Louis, Missouri; Wichita and Kansas City, Kansas; Oklahoma City, Enid, Tulsa, and Stillwater, Oklahoma; Lexington and Louisville, Kentucky; Miami, Florida; Charleston, West Virginia; Sumter, South Carolina; East St. Louis, Illinois; Nashville, Tennessee; Atlanta, Georgia; and Durham, North Carolina.”²¹⁵ Then, starting with the Greensboro, NC sit-in of February 1, 1960, through April 1, 1960, there were restaurant sit-ins in approximately 709 Southern cities.²¹⁶

Meanwhile, in 1958, Black Howard Law student Bruce Boynton refused to move from the white to the “colored” lunch counter in the Trailways Bus terminal in Richmond, Virginia.²¹⁷ When his case reached the Supreme Court, the Court ruled on statutory grounds, holding that the Interstate Commerce and Motor Carrier Acts barred segregation in terminal restaurants that an interstate carrier “owned or operated or controlled.”²¹⁸ (Bruce Boynton was the son of Amelia Boynton (later Robinson), head of the Dallas County (Selma, Alabama) Voters League, and an important civil rights figure.)²¹⁹

Intrastate travel continued to be legally segregated until fifteen years later; this intrastate segregation was challenged in Montgomery,

²¹³ MEIER & RUDWICK, *supra* note 49, at 4–13; MARTHA BIONDI, *TO STAND AND FIGHT: THE STRUGGLE FOR CIVIL RIGHTS IN POSTWAR NEW YORK CITY* 81 (2003) (stating also that Telford Taylor, a U.S. prosecutor at the Nuremberg trials, was general counsel of the committee).

²¹⁴ ALDON D. MORRIS, *THE ORIGINS OF THE CIVIL RIGHTS MOVEMENT: BLACK COMMUNITIES ORGANIZING FOR CHANGE* 190 (1984).

²¹⁵ *Id.* at 188–89.

²¹⁶ *Id.* at 195.

²¹⁷ BARNES, *supra* note 119, at 144.

²¹⁸ *Boynton v. Virginia*, 364 U.S. 454 (1960); BARNES, *supra* note 119, at 148. *Cf.* ARSENAULT, *supra* note 117, at 93 (stating, incorrectly, that the Court ruled “that state laws mandating segregated waiting rooms, lunch counters, and restroom facilities for interstate passengers were unconstitutional”).

²¹⁹ *See, e.g.*, BRANCH, *supra* note 212, at 410–11; HENRY HAMPTON & STEVE FAYER WITH SARAH FLYNN, *VOICES OF FREEDOM: AN ORAL HISTORY OF THE CIVIL RIGHTS MOVEMENT FROM THE 1950S THROUGH THE 1980S* 210–12 (1990); DAVID HALBERSTAM, *THE CHILDREN* 418–19 (1998) (stating that Bruce Boynton was the son of Amelia Boynton).

Alabama by Claudette Colvin, Mary Louise Smith, and others, and then by Mrs. Rosa Parks, whose arrest sparked the 1955 Montgomery Bus Boycott and the Supreme Court decision that invalidated segregation in intrastate transportation.²²⁰ Racial segregation in interstate transportation and public accommodations was not substantially ended until well after the Freedom Rides that began in 1961 and the enactment and enforcement of the Civil Rights Act of 1964.²²¹

Pauli Murray wrote of her effort to end racial segregation at the University of North Carolina:

I was part of a tradition of continuous struggle, . . . marked by modest beginnings and several bitter defeats Each new attempt was linked with a previous effort, which, although unsuccessful, nevertheless had an impact on the forward movement. I had dared because Hocutt had tried and failed Once begun, this debate would not be silenced until the system of enforced segregation was outlawed everywhere in the land.²²²

The sense of continuity is an important aspect of this long movement for human rights.²²³

²²⁰ See JO ANN GIBSON ROBINSON, *THE MONTGOMERY BUS BOYCOTT AND THE WOMEN WHO STARTED IT: THE MEMOIR OF JO ANN GIBSON ROBINSON* 37–42 (David J. Garrow, ed. 1987) (re: Claudette Colvin and Mary Louise Smith); Branch, *supra* note 212, at 120–24 (re: Claudette Colvin), 128 et seq. (re: Mrs. Parks); Randall Kennedy, *Martin Luther King's Constitution: A Legal History of the Montgomery Bus Boycott*, 98 YALE L.J. 999 1009–10 (1989); Gayle v. Browder, 352 U.S. 903 (1956) (invalidating segregation in intrastate commerce). It was *Browder v. Gayle*, not *Brown v. Board*, that overruled *Plessy v. Ferguson*.

²²¹ See, e.g., ARSENAULT, *supra* note 117, at 477–503 (describing resistance to desegregated transportation) and RICHARD C. CORTNER, *CIVIL RIGHTS AND PUBLIC ACCOMMODATIONS: THE HEART OF ATLANTA MOTEL AND MCCLUNG CASES* 194–99 (2001) (describing resistance to desegregation of public accommodations).

²²² SONG IN A WEARY THROAT: AN AMERICAN PILGRIMAGE, *supra* note 12, at 128.

²²³ August Meier sees discontinuities in the movement: he writes that, “The transportation boycotts of the 1950s were a new, creative invention. It is at least debatable that the leaders in Montgomery were conscious of or were inspired by the Baton Rouge boycott; it can be stated with certainty that the boycott leaders were not aware of the streetcar boycotts that had occurred in every southern state when trolley cars were segregated in the early part of the twentieth century.” August Meier, *Epilogue: Toward a Synthesis of Civil Rights History*, in *NEW DIRECTIONS IN CIVIL RIGHTS STUDIES* 211, 211, 214 (Armstead L. Robinson & Patricia Sullivan, eds. 1991). Meier writes that Dr. King and SCLC said that Montgomery represented “a new idea, a new strategy” and that “the youthful college student demonstrators of 1960 who formed SNCC lacked an awareness of connections with a tradition of black protest.” He writes also that the SNCC students “were unconscious of the early work of CORE and . . . of the NAACP-sponsored sit-ins of the late 1950s, most notably in Oklahoma City.” With great respect, I note that this ignorance seems unlikely given the role of Ella Baker in the formation of SNCC. More generally, Professor Morris makes a strong case for continuity, documenting the “organizational and

4. *Human rights advocacy embraces multiple forms of persuasion.*

Murray said that one person plus a typewriter – or, we might say today, a computer or a smart phone – equals a movement.²²⁴ Murray “never allowed herself to be silenced.”²²⁵ Murray lived zir own individual principles (starting with zir early determination to avoid segregation by not using public transportation when ze lived in Durham, N.C.), studied and applied the lessons of Gandhi, organized group protests, and employed correspondence, journalism, and poetry as well as legal advocacy.²²⁶ Professor Gilmore describes Murray’s life as a “continuous protest.”²²⁷

This is not an easy way to live, and not all of us can protest continuously, but protest is essential.²²⁸ It would be fruitful to explore the extent to which Murray’s multiple outsider status and her relationships with other racial and sexual outsiders influenced not only the legal and political standards she chose to attack but also the means by which she attacked them.²²⁹

5. *Education – iconoclastic education, of one’s self and others – is essential to the effective advancement of human rights.*

Pauli Murray’s life shows the critical importance of education, of understanding the structures that make our society what it is and the arguments that can change those structures, of learning the stories of those who are not immediately present to us, those distant in time, space, qualities, or every way, of understanding the connections among various

personal networks” that connected the civil rights activists. See MORRIS, *supra* note 214, at 188–226.

²²⁴ ROSENBERG, JANE CROW, *supra* note 2, at 138.

²²⁵ GILMORE, *supra* note 24, at 12.

²²⁶ See, e.g., ROSENBERG, JANE CROW, *supra* note 2, at 64 (stating that Murray “conceive[d] of a blueprint for a civil rights movement that would coordinate legal reform with mass action”); BELL-SCOTT, *supra* note 34, at 124–26 (discussing Murray’s poem, Mr. Roosevelt Regrets, which Murray sent to Eleanor Roosevelt).

²²⁷ GILMORE, *supra* note 24, at 392–93.

²²⁸ See Richard Norman, *Six reasons why protest is so important for democracy*, OPEN DEMOCRACY (Dec. 4, 2017), <https://www.opendemocracy.net/en/six-reasons-why-protest-is-so-important/>; MARK ENGLER & PAUL ENGLER, THIS IS AN UPRISING: HOW NONVIOLENT REVOLT IS SHAPING THE TWENTY-FIRST CENTURY xi-xxiii (2016).

²²⁹ I am indebted to Professor Beth Harris for this point. See also Wittig, *supra* note 8, at 114 (stating that “Homosexuality is the desire for . . . resistance to the norm”).

forms of oppression.²³⁰ Murray had an excellent undergraduate education at Hunter College and continually sought more – at the Brookwood Labor College, in three levels of legal education, in seminary, in travel, in communication with others. Zir time at the Workers’ Education Project of the WPA and then at Brookwood Labor College was particularly important, for it added knowledge of workers’ and consumers’ rights to zir understanding of racial injustice; later, ze added women’s rights to this knowledge base.²³¹

This holistic education was not generally available for the later activists of the 1960s.²³² They

suffered from a rupture in the narrative Many young activists of the 1960s saw their efforts as a new departure and themselves as a unique generation, not as actors with much to learn from an earlier, labor-infused civil rights tradition. Persecutions, censorship, and self-censorship reinforced that generational divide by sidelining independent black radicals, thus whitening the memory and historiography of the Left and leaving later generations with an understanding of black politics that dichotomizes nationalism and integrationism. The civil rights unionism of the 1940s—which combined a principled and tactical belief in interracial organizing with a strong emphasis on black culture and institutions – was lost to memory. As the movement waned and contrary political forces resumed power, that loss left a vacuum for the current dominant narrative to fill.²³³

This is a crucial point. Professor Hall wrote in 2005 that this “void at the center of the story of the modern civil rights struggle . . . is only now beginning to be filled.”²³⁴ To some extent, the touch of optimism in this sentence is justified, for recent scholarship has provided some of those linkages among economic, racial, sexual, and other

²³⁰ Kathryn Schulz, *The Many Lives of Pauli Murray*, THE NEW YORKER (Apr. 10, 2017), <https://www.newyorker.com/magazine/2017/04/17/the-many-lives-of-pauli-murray>.

²³¹ *Id.*

²³² See Hall, *supra* note 199, at 1253–54.

²³³ *Id.*

²³⁴ *Id.* at 1253.

claims, but there do not appear to be systemic sources for this education.²³⁵ The established educational system is not going to teach us lessons of insubordination and subversion; those who benefit from a system will not illuminate ways of overthrowing it.²³⁶ And, as Professors Hall and MacLean and others have pointed out, there is a strong, organized, effective effort on the Right to erase or distort this history and, indeed, to fatally damage the public educational systems that could have preserved and taught it.²³⁷ Professor MacLean writes of the flesh-wounding cuts in public education, “with enabling ‘unregulated charter schools’ and ‘tax subsidies for private education,’ along with sharp cuts in funding for state universities and colleges and vicious attacks on teachers.”²³⁸ We do not have a Workers’ Education Project, a Brookwood Labor College, a Highlander Folk School.²³⁹ We do not have an institutionalized way of training teachers or teaching students to promote social justice. Somehow, however, we must keep ourselves and the rising generations – in grade school, high school, college, law school and other professional schools – educated about the efforts of others, particularly those in the abolitionist, suffrage, labor, civil rights, women’s, disability, sexual equality, and environmental movements.²⁴⁰

²³⁵ See, e.g., GILMORE, *supra* note 24, at 9; JEANNE THEOHARIS, A MORE BEAUTIFUL AND TERRIBLE HISTORY: THE USES AND MISUSES OF CIVIL RIGHTS HISTORY x–xii (2018); MARTIN LUTHER KING, JR., *supra* note 195, at 171–72; JONES, *supra* note 20, at x–xi.

²³⁶ JAMES W. LOEWEN, LIES MY TEACHER TOLD ME: EVERYTHING YOUR AMERICAN HISTORY TEXTBOOK GOT WRONG (1995) (“Dedicated to all American history teachers who teach against their textbooks”); ALTENBAUGH, *supra* note 24, at 4–8; Dana Goldstein, *Two States. Eight Textbooks. Two American Stories*, THE N.Y. TIMES, (Jan. 12, 2020), <https://www.nytimes.com/interactive/2020/01/12/us/texas-vs-california-history-textbooks.html>. A balanced textbook may BE GLENDA ELIZABETH GILMORE & THOMAS J. SUGRUE, THESE UNITED STATES: A NATION IN THE MAKING, 1890 TO THE PRESENT (2015).

²³⁷ HALL, *supra* note 199, at 1258 (stating that, “If the continuing story of school desegregation has been obscured by a narrative of post-1965 declension, the struggle for economic justice has been erased altogether”); JANE MAYER, DARK MONEY: THE HIDDEN HISTORY OF THE BILLIONAIRES BEHIND THE RISE OF THE RADICAL RIGHT 2–4 (2016); NANCY MACLEAN, FREEDOM IS NOT ENOUGH: THE OPENING OF THE AMERICAN WORKPLACE 225–261 (2006); MacLean, *supra* note 205, at xx; TELES, *supra* note 205, at 182; Justin Baragona, *Bill Barr Defends Michael Flynn Reversal: ‘History is Written by the Winners’*, THE DAILY BEAST (May 7, 2020), <https://www.thedailybeast.com/ag-bill-barr-defends-michael-flynn-reversal-says-history-is-written-by-the-winners>.

²³⁸ MACLEAN, *supra* note 205, at xvi.

²³⁹ See JOHN M. GLEN, HIGHLANDER, NO ORDINARY SCHOOL 9 (2d ed. 1996); ALTENBAUGH, *supra* note 24, at 3.

²⁴⁰ For sharpening my understanding of this point, I am indebted to Professor Rosemary Ndubizu of Georgetown University. When she interviewed me for her book about housing advocacy in Washington, D.C. in the 1960s and 1970s, she asked what I thought would have helped us to be more effective then; my answer was that we should have known more about the workers’ and civil rights and women’s movements that had preceded us. I am also grateful to

6. *Helping other people is essential to advancing human rights.*

While Pauli Murray worked very hard – indeed, drove zerself mercilessly – ze also benefitted at crucial times from the kindness of strangers. After graduation from high school in 1926, Murray wanted to attend college in New York City – specifically, at Columbia University.²⁴¹ When Murray and zir Aunt Pauline went to Columbia, however, they were referred to Barnard College, the Columbia affiliate that admitted women, which Columbia did not do at that time.²⁴² An employee at Barnard’s admissions office made clear that Murray had neither the credentials nor the resources necessary to attend Barnard.²⁴³ Rather than simply reject the pair, she suggested Murray apply to Hunter College, where tuition would be free.²⁴⁴ She wrote down directions to Hunter (of which Murray never had heard).²⁴⁵

Again, at Hunter, the pair encountered serendipitous kindness.²⁴⁶ The admissions staff at Hunter explained that Murray had only eleven years of credits and would need twelve, including subjects ze had not studied.²⁴⁷ Also, Murray was a minor from another state and therefore would have to establish the legal residence in New York City that was necessary for admission to Hunter.²⁴⁸ The admissions staff recommended that Murray enroll in a New York City high school and devised a curriculum to follow there.²⁴⁹ Murray and zir aunt arranged for Murray to live with relatives and Murray enrolled in Richmond Hill High School where, Murray wrote, “[p]eople seemed to go out of their way to help,” without regard to the fact that Murray was the only student of color in a high school with four thousand students.²⁵⁰

At other points, too, Murray was assisted by unexpected kindness.²⁵¹ The unlikely friendship of Eleanor Roosevelt was an extraordinary gift to Murray, who said it “filled the . . . landscape of my adult life

TaNay Porshonda Morris, J.D. expected May 2020, for pointing out the importance of being a lifelong teacher as well as learner.

²⁴¹ SONG IN A WEARY THROAT: AN AMERICAN PILGRIMAGE, *supra* note 12, at 64, 66.

²⁴² *Id.* at 66.

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ SONG IN A WEARY THROAT: AN AMERICAN PILGRIMAGE, *supra* note 12, at 67.

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.* at 67–68.

²⁵¹ SONG IN A WEARY THROAT: AN AMERICAN PILGRIMAGE, *supra* note 12, at 351.

. . . .”²⁵² Many decades of closeness to Caroline Ware brought aid in emotional, intellectual, and financial ways.²⁵³ Anne Firor Scott writes that Murray often received help from others, including the poet Stephen Vincent Benet and the attorney Lloyd Garrison.²⁵⁴ There are lessons here for all of us regarding offering, and accepting, kindness.²⁵⁵

III. LEGACY

I can’t pretend that Pauli Murray faced a presidency more hostile than today’s, but ze did have to deal with a jurisprudence, and federal, state, and local legislators and judges, even more dominated by white supremacy, patriarchy, misogyny, and economic royalism than is the case today. Murray had far fewer comrades than we do. We stand on zir shoulders and must continue zir task.²⁵⁶

One specific task Murray left to us is the challenge to remake governing legal standards and their enforcement. In 1944, Murray concluded that the Civil Rights Cases of 1883 should be overruled so that the Fourteenth Amendment would be recognized as barring private as well as public discrimination.²⁵⁷ The Supreme Court ducked that challenge in 1964 in *Heart of Atlanta* and *McClung*.²⁵⁸ We need to meet that challenge now in honor of Murray: to achieve a recognition that the Fourteenth Amendment prohibits private as well as public racial discrimination. As Professor Martha Minow has pointed out, “the ‘state action’ requirement is a precondition for judicial enforcement of individual rights,” and “modern developments make the current mess of the

²⁵² *Id.*

²⁵³ See, e.g., ROSENBERG, JANE CROW, *supra* note 2, at 357 (discussing financial assistance to Murray from Ware and her husband).

²⁵⁴ MURRAY & WARE, *supra* note 87, at 14–15.

²⁵⁵ See generally Florence Wagman Roisman, *An Extraordinary Woman: The Honorable Constance Baker Motley*, 49 IND. L. REV. 677 (2016) (describing similar kindness to the young Constance Baker Motley).

²⁵⁶ See BELL-SCOTT, *supra* note 34, at xiii (quoting Murray’s letter to Bell-Scott stating, with respect to SAGE: A Scholarly Journal on Black Women: “You need to know some of the veterans of the battle whose shoulders you now stand on” and stating that “Murray praised the women activists who had taken the lessons learned in the labor and civil rights movements and applied them to the women’s movement”); Menta, *supra* note 172.

²⁵⁷ The Civil Rights Cases, 109 U.S. 3 (1883) (The *Civil Rights Cases* held that the Fourteenth Amendment does not enable Congress to protect Black people from discrimination by private actors); ROSENBERG, JANE CROW, *supra* note 2, at 147–150.

²⁵⁸ *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241 (1964) (holding Congress authorized by the Commerce Clauses to enact the public accommodations title of the 1964 Civil Rights Act); *Katzenbach v. McClung*, 379 U.S. 294 (1964) (same); CORTNER, *supra* note 221, at 170–72; DEL DICKSON, *THE SUPREME COURT IN CONFERENCE (1940-1985): THE PRIVATE DISCUSSIONS BEHIND NEARLY 300 SUPREME COURT DECISIONS* 726–29 (2001).

state action doctrine even more significant . . . “ than it had been in the past.²⁵⁹

Professor Eric Foner’s powerful 2019 book, *The Second Founding*, concludes with an Epilogue that is a call to arms for this and related tasks.²⁶⁰ Deploing the Court’s failure to “repudiate[] the state action doctrine,” Professor Foner writes that the “state action interpretation of the Fourteenth Amendment can be debilitating” because it “makes it difficult to address the numerous connections between federal, state, and local housing, zoning, transportation, and mortgage insurance policies, and the ‘private decisions of banks, real estate companies, and individual home buyers, that together have produced widespread segregation in housing and education.’”²⁶¹ Citing the work of Pauli Murray and Ruth Bader Ginsburg, he urges a more generous interpretation of the Fourteenth Amendment’s Equal Protection Clause.²⁶²

Professor Foner links this to an expansion of the impact of the Thirteenth Amendment, building on the 1968 decision in *Jones v. Mayer* and using the Amendment to counter other badges and incidents of slavery.²⁶³ We have many more battles to preserve the social justice victories of the past and to extend them dramatically. Murray knew this was a long road and knew that each of us is obligated to go as far along it as we can.

At a time when many are worried about the Supreme Court’s overturning relatively progressive precedents such as *Roe v. Wade* and *Obergefell v. Hodges*,²⁶⁴ it may seem quixotic to urge overturning such conservative stalwarts as the 1883 Civil Rights Cases, but the conservative legal victories result from long-planned campaigns and if progressives are to succeed we, too, must set goals and strategies to achieve them. Overruling the Civil Rights Cases was a goal set by Pauli Murray in 1944; it is a goal to which recommitment is needed in 2020.

²⁵⁹ Martha Minow, *Alternatives to the State Action Doctrine in the Era of Privatization, Mandatory Arbitration, and the Internet: Directing Law to Serve Human Needs*, 52 HARV. C.R.-C.L. L. REV. 145, 146, 152 (2017). The increased sphere of action considered “private” is a subject of MACLEAN, *supra* note 205, as well as of materials discussed by Professor Minow.

²⁶⁰ ERIC FONER, *THE SECOND FOUNDING: HOW THE CIVIL WAR AND RECONSTRUCTION REMADE THE CONSTITUTION* 169–76 (2019).

²⁶¹ *Id.* at 171–73 (citing Richard Rothstein, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (2017)).

²⁶² *Id.* at 173–74.

²⁶³ *Id.* at 169–70, 174–76; *Jones v. Mayer*, 392 U.S. 409 (1968); *see also, e.g.*, MICHAEL VORENBERG, *FINAL FREEDOM: THE CIVIL WAR, THE ABOLITION OF SLAVERY, AND THE THIRTEENTH AMENDMENT* 244–50 (2001); ALEXANDER TESIS, *THE THIRTEENTH AMENDMENT AND AMERICAN FREEDOM: A LEGAL HISTORY* 94–97, 137–160 (2004).

²⁶⁴ *Roe v. Wade*, 410 U.S. 113 (1973); *Obergefell v. Hodges*, 576 U.S. 644 (2015).

Glenda Gilmore ends her book, *Defying Dixie*, quoting Pauli Murray: “In not a single one of these little campaigns was I victorious. In each case, I personally failed, but I have lived to see the thesis upon which I was operating vindicated. I’ve lived to see my lost causes found.”²⁶⁵ Prof. Gilmore writes that “Murray knew that Americans share an interracial past, filled with violence and hatred, balanced by brave action and love, a past where one person, determined and courageous enough to do what is right, could change the present” – and, I would add, influence the future.²⁶⁶ I agree with Professor Gilmore that “[o]ur responsibility to freedom is to challenge its limitations whenever and wherever we encounter them. Only then will we live to see our ‘lost causes found.’”²⁶⁷

²⁶⁵ GILMORE, *supra* note 24, at 443–44.

²⁶⁶ *Id.* at 444.

²⁶⁷ *Id.*